REPORTS

OF

Cases Argued and Determined

IN THE

COURT of CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 28

Containing cases in which opinions were filed and orders of dismissal entered, without opinion, between July 1, 1972 and June 30, 1973

SPRINGFIELD, ILLINOIS

1975

(Printed by authority of the State of Illinois.)

51746

PREFACE

The opinions of the Court of Claims herein reported are published by authority of the provisions of Section 18 of the Court of Claims Act, approved July 17, 1945, as amended; *Ch.* 37, *Sec.* 439.18, 111. *Rev. Stat.*, 1973.

The Illinois Court of Claims hears and determines claims against the State of Illinois based on its laws and administrative regulations, other than claims arising under the Workmen's Compensation Act or the Workmen's Occupational Diseases Act.

The Court also has exclusive jurisdiction to hear and determine all claims against the State: (1) based upon any contract with the State; (2) based on tort by an agency of the State; (3) based on time unjustly served by innocent persons in Illinois prisons; (4) based on tort by escaped inmates of state-controlled institutions; (5) for recovery of funds deposited with the State pursuant to the Motor Vehicle Financial Responsibility Act; and (6) to compel replacement of a lost or destroyed state warrant.

Programs to compensate the next of kin of law enforcement officers, firemen, national guardsmen and naval militiamen killed in the line of duty are administered by the Court.

There has been a substantial increase in the number of claims arising solely as the result of the lapsing of an appropriation from which the obligation could have been paid. This is an outgrowth of the July 1, 1969, change from biennial to annual fiscal planning with the consequent lapsing of appropriations on September 30 of each year in accordance with the State Finance Act. Because of both the volume and general similarity of their content, opinions in such cases have not herein been reproduced in full.

MICHAEL J. HOWLETT
Secretary of State and
Ex Officio Clerk of the
Court of Claims

Officers of the Court

JUDGES

MAURICE PERLIN, ***Chief Justice***
Chicago, Illinois
April 5, 1961—

S. J. HOLDERMAN, ***Judge***
Morris, Illinois
March 10, 1970—

MARION BURKS, ***Judge***
Chicago, Illinois
January 13, 1971—

WILLIAM J. SCOTT, ***Attorney General***
January 13, 1969—

JOHN W. LEWIS
Secretary of State and Ex Officio Clerk of the Court
October 13, 1970—January 7, 1973

MICHAEL J. HOWLETT
Secretary of State and Ex Officio Clerk of the Court
January 8, 1973—

PETER W. MCCUE, JR., ***Deputy Clerk***
Sherman, Illinois
January 5, 1972—March 14, 1973

GARY F. STRELL, ***Deputy Clerk***
Springfield, Illinois
March 15, 1973—

TABLE OF CASES REPORTED IN THIS VOLUME

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CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

(No. 5904–Claimant awarded $177.50.)

TRANS INTERNATIONAL MOVING AND VAN SERVICE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed July *14,* 1972.

TRANS INTERNATIONAL MOVING AND VAN SERVICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6113—Claimants awarded $4,074.20.)

#2 SUTCLIF PHARMACY CORPORATION, and SUTCLIFFE PHARMACY, INC., Claimants, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July *14,* 1972.

ALLEN L. GINSBERG, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6416—Claimant awarded $105.00.)

CHARLES H. NORTHRUP, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion filed July *14,* 1972.

CHARLES H. NORTHRUP, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6437—Claimant awarded $43.00.)

AERO AMBULANCE SERVICE, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed July *14,* 1072.

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6438—Claimant awarded $45.00.)

AERO AMBULANCE SERVICE, INC., Claimant, **os. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed July *14,* 1072.

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6440—Claimant awarded $42.00.)

AERO AMBULANCE SERVICE, INC., *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July *14, 1972.***

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6466—Claimant awarded $176.90.)

PARK VIEW HOME THRIFT SHOP, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed **July *14, 1972.***

JEROME H. STEIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6498—Claimant awarded $497.46.)

SAVIN BUSINESS MACHINES CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed **July *14, 1972.***

SAVIN BUSINESS MACHINES CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6506—Claimant awarded $8.00.)

MASON-BARRON LABORATORIES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 14, 1972.

MASON-BARRON LABORATORIES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6507—Claimant awarded $14.00.)

MASON-BARRON LABORATORIES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 14, 1972.

MASON-BARRON LABORATORIES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6511—Claimants awarded $60.80.)

ROY GREATHOUSE, RAY WAX, CARL G. LIVENGOOD, MYRON WHISNAND, ROSS REEDER, and MARTIN STOCK, JR., Claimants, *vs.* STATE OF ILLINOIS, OFFICE OF THE SUPERINTENDENT OF THE EDUCATIONAL SERVICE REGION, Respondent.

Opinion filed July *14,1972.*

W. A. BOZARTH, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6563—Claimant awarded $2,663.75.)

CHICAGO HOUSING AUTHORITY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed July *14, 1972.*

CALVIN H. HALL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5586—Claim denied.)

DOYLE MCRAVEN, Administrator of the Estate of LOUIS WAYNE MCRAVEN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July *14, 1972.*

FEIFUCH, FEIRICH AND GREEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

NATIONAL GUARD—federal mission. Where national guardsman, while engaged in duty training, caused fatal accident driving a jeep home from tavern at 2:30 a.m. He was not engaged in a state function, but rather a federal function, therefore, the respondent is not liable.

BURKS, J.

Claimant, as administrator of the estate of Louis Wayne McRaven, deceased, brings this action for damages for the wrongful death of the decedent and alleges that his death was caused by the negligent operation of an Illinois National Guard truck when it struck an automobile which decedent was driving.

Claimant contends that the driver of the National Guard truck was an agent of the State of Illinois at the time of the accident. This, of course, is an essential allegation to establish jurisdiction in this Court under §8(d) of the "Court of Claims Act". It is incumbent upon us to determine the question of jurisdiction before considering any other issue.

There is no controversy as to the facts in this matter, and we briefly restate them as follows. The driver of the National Guard truck involved in the accident was Private Kenneth E. Keleher, a member of the Illinois Army National Guard assigned to the 3rd Rifle Platoon, Company A, 2nd Battalion, 129th Infantry stationed at Freeport, Illinois. The headquarters of the battalion was located at Sycamore, Illinois. On June 10 and 11, 1967, Private Kenneth E. Keleher was in attendance at the regularly scheduled multiple unit training assemblies of his Illinois Army National Guard unit. As a part of his duties in connection with these training assemblies, Private Keleher was assigned to operate government vehicle 2½ ton truck M-135, USA 41108473. This was the truck involved in the accident.

On June 10, 1967, Private Keleher was directed to pick up troops of Company A, 2nd Battalion, 129th Infantry at the Armory in Elgin, Illinois, and take them to the Joliet training area. Upon completion of this mission, he was then sent to the Joliet Armory to bring a 1½ ton water trailer back to the Joliet training area. Private Keleher remained in the Battalion Motor Pool until 2:30 p.m. At that time he was dispatched to a Standard service station on Illinois Route 6

and **U.S.** Route **66** for the purpose of obtaining gasoline. Upon return from the service station, Private Keleher completed delivery of certain items of baggage to Company A in the Joliet training area. Apparently having missed the regular evening meal served by his unit due to his absence on assigned duties, Private Keleher returned to the Standard service station, where he had earlier bought gasoline, to eat at the restaurant there. He remained at the restaurant from 7:30 p.m. until 8:45 p.m. and then returned to the Joliet training area.

Some time after returning to the training area, Private Keleher picked up a Private Robert ***C.*** Diehl, and the two of them left the training area in the government vehicle which Private Keleher had been using earlier that day. They drove to the Four Palms Tavern located on Route 53, arriving there at approximately 10:00 p.m. About 11:30 p.m. they were joined at the tavern by a Sergeant Gary E. Dietmeier and a Specialist Four Gary **L.** Derrer. At approximately 2:45 a.m. on June **11, 1967,** these four men left the parking lot of the Four Palms Tavern in the same government vehicle, with Private Keleher driving. The fatal accident occurred a moment later.

At this time claimant's decedent was driving a **1957** Chevrolet in a northerly direction on Route **53** approaching the point of impact which was 3¾ miles south of Joliet and adjacent to the Joliet arsenal area. At this point Route **53** is a four lane divided highway with no traffic signals. At the time of the accident, the weather was clear and dry. The truck driven by Private Keleher left the parking lot and turned south into the northbound lanes. The left front of decedent's car and the left front of the government truck collided. Claimant's decedent was thrown from his car into the path of a northbound pick-up truck driven by Brian J. Hrpcha. Claimant's decedent was killed instantly.

The record establishes the fact that the National Guard member, Private Keleher, was engaged, at the time of this fatal accident, in inactive duty training under 32U.S.C.§502. That section reads as follows:

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary Concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within seven consecutive days of the same calendar month.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

(1) the number of members present equals or exceeds the minimum number prescribed by the President;

(2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill. Aug. 10, 1956, c. 1041, 70A Stat. 610.

This Court has consistently taken the position that whenever the National Guard is either called into active duty under Title 10, $263, or into active training under the above quoted $502, its members are on a "federal mission" and not performing a state function.

The National Guard is a reserve component of the Armed Forces of the United States (10 U.S.C. $261). It is

clear from a reading of Titles **10** and **32** of the U. S. Code that the mission of the National Guard, both on active duty (10 U.S.C. **$263)** and inactive training **(10** U.S.C. **$502, 503)** is primarily a federal mission.

We commented at length on the employment status of the members of the Illinois National Guard in an Order entered April **27,1971,** dismissing the complaint in ***Speer*** vs. ***State,*** Court of Claims No. **5903.** Said order, awaiting publication, was attached to respondent's brief with copy to the claimant.

In the ***Speer*** order we acknowledged that there are circumstances under which the National Guard may **be** called into service by the Governor when necessary for the performance of a state function. That was not the situation in the case before us.

Since the National Guard unit to which Private Keleher was attached was not engaged in the performance of a state function or in state service at the time of the fatal accident, he was not an agent nor an employee of the State of Illinois. Hence the state would not be responsible for his acts and claimant's cause of action is not within the jurisdiction of this Court.

We have not overlooked claimant's contention that proof of ownership of a motor vehicle raises the presumption that the person operating the motor vehicle was the agent of the owner and acting within the scope of his employment. However, the record indicates that the state did not own the National Guard truck involved in the accident. It bore serial number USA **41108473,** and was a vehicle owned by the United States. Title **32,** U.S.C. **$710** states in part:

"All military property issued by the United States to the National Guard remains the property of **the United States."*****

It is thus apparent that any presumption of agency

arising out of ownership of the government vehicle would further tend to establish the fact that Private Keleher was an agent of the United States government and not an agent of the State of Illinois.

Obviously, the further question as to whether Private Keleher was acting within the scope of his employment at the time of the accident is not an issue properly before this Court since he was not then employed by the respondent.

We conclude, therefore, that the alleged tort feasor was not an agent of the State of Illinois at the time of the accident and that this claim against the respondent must be denied.

The claim is denied.

(No. **6571—Claimant awarded $15.00.**)

MASON-BARRON LABORATORIES, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *July* 14, 1972.

MASON-BARRON LABORATORIES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6577—Claimant awarded $28.00.)

L. E. MANDERNACK, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 14, 1972.

DR. L. E. MANDERNACK, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridwn. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6579—Claimant awarded $10.00.)

GEDAS GRINIS, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July *14, 1972.*

DR. GEDAS GRINIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriution. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6589—Claimant awarded $11.00.)

FRED N. SMITH, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed **July *14, 1972.***

DR. FRED N. SMITH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriution. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6597—Claimant awarded $1,044.32.)

RUTH FEATHER ALLISON, Executrix of RAYMOND FEATHER, Deceased, Claimant, ***vs.*** STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed July *14, 1972.*

ARNOLD AND KADJAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6602—Claimant awarded $128.04.)

XEROX CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed July *14, 1972.*

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation, When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6610—Claimant awarded $126.50.)

JEFFERSON STATIONERS, INC., Claimant, *vs.* **STATE OF ILLINOIS,** SUPERINTENDENT OF **PUBLIC INSTRUCTION,** Respondent.

Opinion filed July *14, 1972.*

JEFFERSON STATIONERS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6617—Claimant awarded $42.00.)

PIATT COUNTY DEPARTMENT OF MENTAL HEALTH, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July 14,** 1972.

PIATT COUNTY DEPARTMENT OF MENTAL HEALTH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6618—Claimant awarded $166.52.)

UNION ELECTRIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July 14,** 1972.

UNION ELECTRIC COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6622—Claimant awarded $562.50.)

HAZEL-WILSON HOTEL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July 14,** 1972.

SAMUEL A. SCHWARTZ, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6624—Claimant awarded $212.00.)

WRIGHT'S MOVING CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed **July *14, 1972.***

WRIGHT'S MOVING CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6627—Claimant awarded $23,166.00.)

FRUEHAUF CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed **July 14, *1972.***

CASSIDY AND CASSIDY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6630—Claimant awarded $39.00.)

A-1 **AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed **July *14, 1972.***

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6632—Claimant awarded $42.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

***Opinion* filed July *14,* 1972.**

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6633—Claimant awarded $5.80.)

A-1 AMBULANCE SERVICE, INC., Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed* July *14, 1972.

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6662—Claimant awarded $1,422.40.)

THE NASH ENGINEERING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed July *14, 1972.*

THE NASH ENGINEERING COMPANY, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6666—Claimant awarded $70.69.)

NORTHERN PROPANE **GAS** COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed July *14, 1972.*

NORTHERN PROPANE GAS **COMPANY,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6668—Claimant awarded $297.36.)

THELMA L. BEALL, Executor of the Estate of LAWRENCE BEALL, Deceased, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed July *14, 1972.*

THOMSON, THOMSON, MIRZA **AND ZANONI,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM** E.

WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J

(No. 6694—Claimant awarded $401.40.)

FIDELITY FILE BOX, INC., Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed ***July 14, 1972.***

FIDELITY FILE BOX, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6709—Claimant awarded $2,734.80.)

CHARLES MCCORKLE, JR., Claimant, *vs.* STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion filed **July *14, 1972.***

CHARLES MCCORKLE, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6635—Claimant awarded $39.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 14, 1972.

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6638–Claimant awarded $2,155.00.)

DECATUR MENTAL HEALTH CENTER, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 14, 1972.

DECATUR MENTAL HEALTH CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6651—Claimant awarded $169.84.)

STEWART OLSON IMPLEMENT COMPANY, INC., Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed July 14, 1972.

STEWART OLSON IMPLEMENT COMPANY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6654—Claimant awarded $126.32.)

GLICK MEDICAL AND SURGICAL SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July *14, 1972*.**

GLICK MEDICAL AND SURGICAL SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6655—Claimant awarded $12.08.)

HOLIDAY INN OF EDWARDSVILLE, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *July 14, 1972*.

HOLIDAY INN OF EDWARDSVILLE, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6659—Claimant awarded $288.63.)

MURPHY AND MILLER, INC., Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed July *14, 1972.*

MURPHY AND MILLER, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6713—Claimant awarded $507.45.)

PASSAVANT MEMORIAL AREA HOSPITAL ASSOCIATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed July *14, 1972.*

PASSAVANT MEMORIAL AREA HOSPITAL ASSOCIATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5712—Claim denied.)

HAZEL THODE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July *27, 1972.*

DRACH, TERRELL AND **DEFFENBAUGH,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—*duty to visitors.* A member of the general public who is present is an invitee and the state has a duty to exercise ordinary care to protect such invitee from harm.

HOLDERMAN, J.

Claimant is a 74 year old lady who was injured on October 7, 1969, while visiting the Lincoln Home in Springfield.

She alleges that on October 7,1969, and while visiting the Lincoln Home and after going through the house, she was directed to the outbuildings in the backyard. In order to get to the backyard, it was necessary to travel upon a boardwalk and while upon this boardwalk, she slipped and fell fracturing her hip.

At the time of the accident, claimant stated that she was wearing an old pair of shoes with inch high heels composed of very hard rubber.

Her statements are conflicting as to the condition of the boardwalk. In one instance, she stated that the boardwalk was wet and in another that it must have been like ice.

In any event, she sustained severe injuries, was treated originally at St. John's Hospital in Springfield and then was flown to Denver, Colorado, which was her home, in a private plane. She underwent surgery at the Denver hospital and there a new ball socket was placed in her hip.

She had a part-time business of raising money for various organizations. In 1967, she earned $1,044.65, in 1968, she made $1,082.62 and in 1969, she earned $758.25. She claims that the accident affected her ability to put on sales and that before the accident, she accepted three assignments per week but since the accident, she has been able to accept only one assignment.

She incurred very substantial medical and hospital bills as the result of said injury.

The report of the Department of Conservation, who made an investigation after the accident, was that it had rained the night of October 6th and on October 7th, the time

of the accident, the walk itself was still wet. The evidence was that there was not any loose boards or protruding nails and the walk was comparatively new. There were no signs of any kind or character relative to this walk and there is a complete absence of any negligence on the part of the respondent, with the only evidence being that there was a wet sidewalk.

Before claimant can recover damages from the State, it must be proved that she was in the exercise of due care and caution for her own safety, that the State was negligent, and such negligence was the proximate cause of the accident. *McNary* vs. ***State of Illinois, 22 C.C.R.,328-334; Bloom*** vs. ***State of Illinois, 22 C.C.R.,582-585***; ***Week*** vs. ***State of Illinois, 4719.***

In this case, it does not appear that there was any negligence on the part of the State and certainly the mere fact that a sidewalk was wet from rain does not prove any negligence. As a matter of fact, the only negligence claimed by claimant is that the tourer of the premises was upon a wooden walkway which was open and unprotected from the weather and was without railings and protective devices.

We do not believe that, in itself, constitutes such an act of negligence on the part of the State as to allow recovery by the claimant.

This Court has repeatedly held that in State Parks, etc., such as the Lincoln Home, a member of the general public who is present is an invitee and the State has the duty to exercise ordinary care to protect such invitee from harm. ***Vol. 25 C.C.R. 353.*** It is also the law of the State of Illinois that the State is not an insuror of the safety of those who make use of park facilities but it must use reasonable care in the maintenance of its park facilities and supervise the use thereof by the public. ***Vol. 21 C.C.R. 467.***

This claim is therefore denied.

(No. 5976—Claimant awarded $62.35.)

CAUTION LITES, INC., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed **July** 27, 1972.

BURCHMORE, GOOD **AND** BOBINETTE, Attorney for Claimant.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6432—Claimant awarded $47.00.)

BERZ AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July** 27, 1972.

BERZ **AMBULANCE SERVICE, INC.,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6456—Claimant awarded $216.00.)

JACK H. **QUERCIAGROSSA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.**

Opinion filed **July** 27, 1972.

JACK H. QUERCIAGROSSA, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6490—Claimant awarded $324.50.)

ZION NURSING HOME, INC., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July 27,1972.**

ZION NURSING HOME, INC., Claimant, pro se.

WILLIAM J. **SCOTT**, Attorney General; **SAUL** R. **WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6499—Claimant awarded $762.98.)

UNION OIL COMPANY OF CALIFORNIA, Claimant, us. STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed ***July* 27, 1972.**

UNION OIL COMPANY OF CALIFORNIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6596—Claimant awarded $350.00.)

H. M. LEES, M.D., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***July* 27, 1972.**

DR. H. M. LEES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridwn. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6605—Claimant awarded $250.00.)

SCOTT MAC EACHRON, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS, Respondent.

Opinion filed July *27, 1972.*

SCOTT MAC EACHRON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6607—Claimant awarded $180.00.)

SHELDON J. SKODKI, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 27, 1972.

DR. SHELDON J. SKODKI, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim 'should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6631—Claimant awarded $39.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed July *27, 1972.*

A-1 **AMBULANCE SERVICE, INC.**, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6636—Claimant awarded $6.80.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed July *27, 1972.*

A-1 **AMBULANCE SERVICE, Inc.**, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6657—Claimant awarded $3,078.48.)

NORTHERN ILLINOIS GAS COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DIVISION OF WATERWAYS**, Respondent.

Opinion filed July *27, 1972.*

NORTHERN ILLINOIS GAS COMPANY, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the

amount due claimant.

PERLIN, C.J.

(No. 6701—Claimant awarded $337.59.)

L. P. THERMOGAS COMPANY, **Claimant,** *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, **Respondent.**

Opinion filed **July** *27, 1972.*

L. P. THERMOGAS COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for **Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6712–Claimant awarded $76.25.)

STREETER AMET, DIVISION OF MANGOOD CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.**

Opinion filed **July** *27,1972.*

STREETER AMET, DIVISION OF MANGOOD CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for **Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6714—Claimant awarded $18.00.)

COYE C. MASON, M.D., **Claimant,** *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, **Respondent.**

Opinion filed *July 27, 1972.*

DR. COYE C. MASON, **Claimant, pro se.**

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas — lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6744—Claimant awarded $24.50.)

THE NCR COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed July 27, 1972.

THE NCR COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6792–Claimant awarded $846.25.)

DONALD C. RIKLI, Claimant, os. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed July 27, 1972.

DONALD C. RIKLI, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5855—Claimant awarded $132.00.)

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 3, **1972.**

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5856—Claimant awarded $226.80.)

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August **3,1972.**

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5857—Claimant awarded $95.00.)

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 3, **1972.**

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,

Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5858—Claimant awarded **$170.00.)**

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, *vs.* **STATE** OF **ILLINOIS, DEPARTMENT OF PUBLIC AID**, Respondent.

Opinion filed August 3,1972.

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5859—Claimant awarded $83.00.)

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, *vs.* **STATE** OF **ILLINOIS, DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed August 3, 1972.

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5861—Claimant awarded $88.00.)

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 3, 1972.

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5862—Claimant awarded $105.00.)

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 3, 1972.

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5865—Claimant awarded $183.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 3,1972.

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,

Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5866—Claimant awarded $131.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed **August 3, 1972.**

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5867—Claimant awarded $289.60.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed **August 3, 1972.**

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5870—Claimant awarded $102.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *us.* **STATE** OF ILLINOIS, **DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed ***August* 3,1972.**

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; **EDWARD L.** S. ARKEMA, JR., Assistant Attorney, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 5872—Claimant awarded $367.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *us.* **STATE** OF ILLINOIS, **DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed August **3,1972.**

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6333—Claimant awarded $165.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* **STATE** OF ILLINOIS, **DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed ***August* 3, 1972.**

LICATA MOVING AND STORAGE COMPANY, Claimant, pro ***se.***

WILLIAM J. **SCOTT,** Attorney General; **EDWARD L.** S.

ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriutwn. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6334—Claimant awarded $185.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* **STATE** OF **ILLINOIS, DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed August 3, 1972.

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5451—Claim denied.)

SELWYN ZUN, Administrator of the Estate of **JAMES CORRIGAN, JR.,** Deceased, Claimant, *us.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed August *4,* 1972.

MULLIN, ZUN AND DEVINE, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, ZEAMORE ADER, and ETTA COLE, Assistant Attorneys General, for Respondent.

PRISONERS AND INMATES. Where claimant, an inmate in a psychiatric hospital committed suicide while in the presence of two attendants, the state did not fail to exercise due care.

PERLIN, C.J.

Claimant seeks recovery of $25,000 as Administrator of the Estate of James Corrigan, Jr., deceased, who committed

suicide by jumping from an elevated train platform in front of a passing train while in the company of two attendants from the Illinois State Psychiatric Hospital.

The evidence reveals that on November 17, 1965, James Corrigan, Jr., was admitted to the Illinois State Psychiatric Hospital upon order of the Circuit Court of Cook County, Illinois. At the time of admission, his condition was diagnosed as "schizophrenic reaction, acute undifferentiated type."

The respondent's hospital records pertaining to Corrigan were introduced into evidence by stipulation. The following is adduced from the hospital records:

The patient was in the hospital for sixty-three days and was cooperative with the staff. His father was an alcoholic who died in jail and his mother committed suicide in 1961 by jumping from a ***15-story*** window while the patient was visiting her. Since his mother's death, the patient began to drink heavily. He married in 1963 and had one child and at the time of hospitalization his wife was four months pregnant.

On December 30, 1965, the records show that the patient was permitted to work away from the hospital on a part-time basis. On January 6, 1966, the patient's wife called the Supervisor of Psychiatric Social Work at the hospital and expressed concern because of the patient's very overt depression. For the first time he openly expressed suicidal thoughts because of his fear that he would spend "the rest of my life in mental hospitals" and also, for the first time spoke of "getting a gun and doing away with the family."

Entries in the hospital records indicate that the patient was severely depressed on January 9, 1966. Suicidal precautions were entered as physician orders on January 11, 1966, and were removed on January 17, 1966. The discharge summary states:

"After one week his depression seemed to have completely lifted. Plans were made that he would go back to work on a part time basis in the near future. Part of this plan was to provide him with enough structure that he would be able to function. Two days later and before the plan was put into effect, the patient went on a field trip with other patients and staff members. While they were waiting on the platform at the elevated train station, the patient leaped in front of the train when it pulled into the station and he was instantly killed."

Claimant contends that the Illinois State Psychiatric Hospital failed to exercise reasonable watchfulness of the decedent and that a man whose expressed suicidal thoughts caused suicidal precautions to be imposed should not be allowed on an elevated platform within two days of the lifting of these suicidal precautions.

Dr. Marvin Ziporyn, a practicingpsychiatrist called as a witness for the claimant, testified in answer to a hypothetical question, that the termination of the suicidal precautions were premature and should have been continued for another ten days to two weeks to allow the staff to observe whether the transition away from suicidal tendencies had in fact occurred. On cross examination he testified that this was a question of clinical judgment as opposed to negligence in treating a patient and that returning such a patient to a normal environment within a reasonable time is conducive to good mental therapy.

Dr. Jewett Goldsmith, a psychiatrist called as a witness for respondent, testified that he is Chief of the Northwestern University Family Service at the Illinois State Psychiatric Institute; that he is in charge of thirty-five to forty patients there; that James Corrigan was one of his patients and was assigned to and treated by a resident doctor, Dr. Ingeborg Fasse, who consulted with Dr. Goldsmith. Dr. Goldsmith

said that the patient had been given a work pass on December **30, 1965,** which was rescinded on January **11, 1966,** after Corrigan had expressed suicidal anxiety precautions on January **10,1966.** Suicidal precautions mean that a patient cannot leave a ward without supervision and must be checked every fifteen minutes. Dr. Goldsmith stated that there is no particular timetable when suicidal precautions should be lifted and in Corrigan's case they were lifted on January **17,** based "on a number of days worth of reports from the nursing personnel that he no longer appeared depressed, that he was talking more hopefully and on the basis of Dr. Fasse's observations and interview, on the basis of his discussing future plans with a certain amount of insight into his problems; and with constructive ideas about how he would go about conducting his life in the future and conducting his work and **so** forth in the face **of** totalabsence **of** any indication that suicidal thinking was still going on."

Dr. Goldsmith further testified that the patient had made no overt suicidal attempts at the institution nor were they aware of any history of making suicidal attempts. The field trip was a therapeutic procedure in Dr. Goldsmith's opinion and was considered in the patient's best interest as part of his over-all treatment plan. Once the patient was "seen as being no longer suicidal and his depression was lifted . . . a rapid return to work pass was seen as being in the offing."

Dr. Goldsmith disagreed with Dr. Ziporn on a time factor in lifting suicidal precautions and stated that even after observing a patient for two weeks, "he still might, on the first ground pass, commit suicide."

In order to recover, by a preponderance of the evidence, claimant must prove that respondent was negligent in its duty towards the decedent and that such negligence was the proximate cause of decedent's death.

Respondent contends that it exercised reasonable care in the diagnosis, treatment, and management of the decedent; that it used reasonable care in prescribing a plan for rehabilitation of the patient which included the field trip; that the decisions of respondent's physicians were made on medical judgments in the exercise of reasonable care; and that permitting the decedent to take the field trip was not the proximate cause of his death.

In the case of ***Hanvey*** vs. ***State of Illinois,*** 22 C.C.R. 513, Patricia Hanvey was a patient at the Kankakee State Hospital and had a history of suicide attempts and was classified "schizophrenic reaction, acute undifferentiated type," as in the instant case. Shortly after she was allowed ground privileges, she committed suicide by drowning herself in the Kankakee River which bordered the hospital.

In denying recovery, the Court conceded that the standard of care is identical in private and public institutions, but held that the State is not an insurer as follows:

"The only way that the state could protect all mental patients, regardless of the progress of improvement they had shown, would be not to grant any ground privileges, or any privileges whatsoever. . .not to permit any patient of this kind, or any other type privileges, because there is always a possibility that any mental patient might find some means to destroy himself; and, to keep all patients under constant surveillance. This, in our opinion, would certainly be a detrimental factor, and would impede recovery, as it is unquestionably a part of the therapy treatment as mental patients show signs of improvement and self-reliance to grant them privileges preparatory to restoring them to a natural and normal existence. . . ." (at p. 519)

In the case of ***Hebel*** vs. ***Hinsdale Sanitarium and Hospital,*** 2 Ill. App. 2d 527, a mental patient was given shock treatment, but not provided sufficient security. She left the hospital and was killed by a railroad train. In denying her husband recovery against the hospital, the Court stated:

"If the negligence does nothing more than furnish a condition by which the injury is made possible and that condition causes an injury by the subsequent independent act of a third person, the creation of the condition is not the proximate cause of the injury."

In the opinion of the Court, the claimant has failed in its burden of proof. There is no showing that respondent failed to exercise reasonable care nor that the tragedy was the natural and probable consequence of their care or lack of care.

Recovery is therefore denied.

(No. 5491—Claimants awarded $15,000.00.)

ARTHUR A. BLEAU, and SOPHIE J. BLEAU, his wife, partners, d/b/a AIRWAY TRAILER PARK AND SALES, a partnership, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 17,1972.
Petition of Respondent for Rehearing denied August 10,1972.

PETERSON, LOWRY, RALL, BARBER AND ROSS, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; ETTA COLE and SAUL R. WEXLER, Assistant Attorneys General, for Respondent.

HIGHWAYS—*repair* by State. Where National guard, following a tornado, ripped up concrete slabs serving as sidewalks, respondent was under duty to exercise reasonable care even though it voluntarily engaged in the rescue and cleanup operation.

HOLDERMAN, J.

Claimants, Arthur A. Bleau and Sophie J. Bleau, d/b/a Airway Trailer Park & Sales, a partnership, seek recovery for damages to their trailer park at Oak Lawn, Illinois.

The facts, briefly, are as follows:

On April **21, 1967,** a tornado struck claimants' trailer park located at **9001** South Cicero Avenue, *Oak* Lawn, Illinois. This tornado caused considerable loss of life and damage to property, including a portion of the trailer park of the claimants.

The Illinois National Guard was called to the scene by

the Governor of the State of Illinois to assist the local authorities in caring for the injured, recovering the dead, and in a general cleanup operation.

The National Guard responded promptly; moved in its personnel, trucks and other machinery; carried on a search for dead and injured persons; and also was instrumental in recovering many truckloads of personal property of the inhabitants of the area.

Claimants content that, in its cleanup operation, the Illinois National Guard negligently and improperly scooped up and removed various concrete slabs on which claimants set trailers and used as walkways, as well as water and sewer pipes and other underground utilities. The concrete slabs were four inches to five inches thick and set flush with the ground. The water and other underground utilities in some instances had risers extending above ground.

Claimants' Exhibit 1, a photograph taken after the tornado struck but before cleanup operations, shows the condition of the premises with wrecked trailers, debris, and a general chaotic condition. It also shows a number of the slabs in question, which appear to be at ground level and apparently not affected by the storm.

Claimants' Exhibit No. 2 is a picture taken after the cleanup operations were completed and shows the premises very clean, with all slabs removed except those in the lower left hand comer. There is a complete absence of other slabs or walks.

Respondent contends that the National Guard was not negligent in the operation of its bulldozers and did not remove the slabs nor cause the alleged damage. Respondent infers that the private contractors, who were also engaged in bulldozing the area, were responsible for the said damages.

This case turns on a simple question of fact, namely,

whether or not the bulldozers of the National Guard did remove the concrete slabs and damage the utilities.

Twenty witnesses testified at the hearing, ten on behalf of the claimants, and ten on behalf of the respondent. While some of the claimants' witnesses were connected with the claimants in various ways, their testimony was consistent in placing the Illinois National Guard on the scene and in seeing no private contractors in the park. Respondent's witnesses testified as to various procedures in their operation including the height at which they had set their bulldozer blades.

The members of the National Guard also testified to the fact that there was equipment of private contractors operating in the area and this is borne out by the picture of the bulldozers in petitioners' Exhibit 1 which shows that one bulldozer was in the area at a time before the arrival of the Illinois National Guard.

Preponderance of the evidence indicates that the Illinois National Guard did the greater portion of the bulldozing operation at the trailer park.

That there was removal of many of the slabs on which the trailers were set is evidenced by Exhibit 2 which shows the area after the National Guard had finished their operation, and it discloses that most of the slabs were removed.

Claimants expended the sum of **$35,139.02** to put their trailer park back in operation and introduced various bills, the total of which aggregated the above amount.

Some of the bills were for the replacement of concrete patios, replacement of black dirt fill, replacement of the sewage system, replacement of underground wiring, replacement of mobile home valves, piping and accessories, replacement of hardware utility connections, replacement of lumber support of underground sewers and labor costs in

repairing damages.

Claimants also made a claim for loss of rental of the trailers in the amount of **$13,870.11.**

The Illinois National Guard, having voluntarily undertaken to engage in a rescue and cleanup operation on the claimants' property, was under a duty to exercise ordinary care while engaged in said operation so as not to injure or destroy the claimants' property.

One of the closest cases in point is the case of the ***Village of Lake Villa*** vs. ***State of Illinois,*** Volume ***22,*** Court of Claim Reports, Page **4.** In this case the State hired a private contractor to use a bulldozer in cleaning the highways. The bulldozer, being used for a snow removal job, struck and broke a fire hydrant of the Village. The State was held responsible by reason of the negligent operation causing the damage.

Applying the same rules to this case, it is apparent that the National Guard was negligent in certain acts which caused some of the alleged damage.

In the case of ***Walter N. Clark*** vs. ***State of Illinois, 22*** C.C.R. **173,** where the damage was caused by an Illinois National Guard vehicle, which was not being properly operated, and there being no contributory negligence on the part of the claimant, the State was held liable.

The Reports are replete with cases holding that the negligence of the Illinois National Guard in the operation of its vehicles and equipment, where there was no contributory negligence on the part of the claimant, results in an award to the claimant.

With respect to the amount of loss suffered by the claimants for the alleged loss of rental for the trailers, we cannot agree with the position of the claimants. The damage resulting in the destruction of the trailers was that of the

tornado and not of the Illinois National Guard. Regardless of any acts of the Illinois National Guard, this damage had already occurred before their arrival, and new trailers would have had to be erected before any rentals could accrue.

If there were any delay in the reconstruction and replacement of these trailers caused by any acts of the National Guard, we believe it was more than off-set by the cost of the cleanup operation performed gratuitously by the Illinois National Guard. Therefore, any claim for loss of rentals is hereby denied.

We believe that the claimants have proved by a **preponderance** of **the evidence submitted that they** sustained damages in the amount of $15,000.00.

We, therefore, make an award to the claimants in the amount of $15,000.00.

(No. **5873—Claimant awarded $150.00.)**

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed *August* 10,1972.

LICATA **MOVING** AND **STORAGE** COMPANY, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; EDWARD L. **S.** ARKEMA, **JR.,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for **the amount due claimant.**

PERLIN, C.J.

(No. **6019—Claimant awarded $3,645.00.)**

GARFIELD PARK STORAGE COMPANY, A Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 10,1972.

WARREN KRINSKY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6429—Claimant awarded $1,530.17.)

PHILLIPS **PETROLEUM COMPANY**, Claimant, os. **STATE** OF **ILLINOIS, VARIOUS AGENCIES, Respondent.**

Opinion filed August 10,1972.

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriotion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6675—Claimant awarded $37.00.)

A-1 **AMBULANCE SERVICE, INC.**, **Claimant,** os. **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed ***August*** 10, 1972.

A-1 **AMBULANCE SERVICE, INC.**, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6676—Claimant awarded $44.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 10, *1972.*

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(Nb. 6715—Claimant awarded $8.00.)

MASON/BARRON LABORATORIES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 10, *1972.*

MASON-BARRON LABORATORIES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriution. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6735—Claimant awarded $8.13.)

GETHNER DRUGS, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 10, *1972.*

GETHNER DRUGS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6739—Claimant awarded $1,100.00.)

VIRGINIA METAL PRODUCE, DIVISION OF GRAY MANUFACTURING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed August *10,* 1972.

KIRKLAND AND ELLIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6742—Claimant awarded $23.00.)

MASON-BARRON LABORATORIES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 10,1972.

MASON-BARRON LABORATORIES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6745—Claimant awarded $15.00.)

MASON-BARRON LABORATORIES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 10,1972.

MASON-BARRON LABORATORIES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6748—Claimant awarded $1,200.00.)

STROMBERC DATAGRAPHIX, INC., Claimant, *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.**

Opinion filed August *10, 1972.*

STROMBERG DATAGRAPHIX, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J

(No. 6766—Claimant awarded $43.00.)

A-1 **AMBULANCE SERVICE, INC., Claimant,** *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed **August** 10, 1972.

A-1 **AMBULANCE SERVICE,** INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6767—Claimant awarded $38.00.)

A-1 **AMBULANCE SERVICE, INC.,** Claimant, *vs.* **STATE** OF ILLINOIS, **DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed **August** *10,1972.*

A-1 **AMBULANCE SERVICE, INC.**, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropsiation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6771—Claimant awarded $600.00.)

ISADORE SPINKA, M.D., **Claimant,** *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed **August** *10,1972.*

DR. **ISADORE SPINKA,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6781—Claimant awarded $60.00.)

Nom A. HAGMAN, **M.D., S.C., Claimant,** *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed **August** 10, *1972.*

DR. **NORM** A. **HACMAN,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6293—Claimant awarded ***$205.80.)***

UNION LINEN SUPPLY COMPANY, Claimant, ***vs.*** STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed August 17, *1972.*

UNION LINEN SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6528—Claimant awarded $1,473.94.)

APPROVED HOME, INC., Claimant, ***vs.*** STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 17, 1972.

KREGER AND KARTON, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6575—Claimant awarded $2,870.00.)

WINNEBAGO COUNTY MENTAL HEALTH CLINIC, Claimant, ***vs.*** STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 17, 1972.

WINNEBAGO COUNTY MENTAL HEALTH CLINIC, Claimant, pro se.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6775—Claimant awarded $360.00.)

XEROX CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 17, 1972.

WILLIAM P. BAUMLER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6578—Claimant awarded $5,950.68.)

ILLINOIS CHILDREN'S HOME AND AID SOCIETY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September 5, 1972.

KIRKLAND AND ELLIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriotion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6620—Claimant awarded $1,926.12.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September 5, 1972.

DRACH, TERRELL AND DEFFENBAUGH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6672—Claimant awarded $5,493.13.)

JOSEPH J. DUFFY Co., A Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed September 5, 1972.

W. L. LAMEY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6684—Claimant awarded $11.00.)

G. E. IRWIN, M.D., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 5, 1972.

DR. G. E. IRWIN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6693—Claimant awarded $1,369.94.)

HONEYWELL, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed September **5, 1972.**

HONEYWELL, INC., Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6707—Claimant awarded $641.15.)

ST. JOSEPH HOSPITAL, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion *filed* September **5, 1972.**

ST. JOSEPH HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6719—Claimant awarded $692.79.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed September **5, 1972.**

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6788—Claimant awarded $49.45.)

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September *5, 1972.*

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6789—Claimant awarded $61.45.)

3M BUSINESS PRODUCTS SALES, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed September *5, 1972.*

3M BUSINESS PRODUCTS SALES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6796—Claimant awarded $150.00.)

HALE-PRIETSCH SERVICES, INC., Claimant, *vs.* STATE OF ILLINOIS, ILLINOIS BUREAU OF INVESTIGATION, RESPONDENT.

Opinion filed September *5,* 1972.

HALE-PRIETSCH SERVICES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6658–Claimant awarded $40.00.)

A. R. BROWNLIE, JR., M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed September 7, 1972.

DR. A. R. BROWNLIE, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6730—Claimant awarded $5,619.05.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed September 7, 1972.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6758—Claimant awarded $390.00.)

DATA PRODUCTS CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed September *7, 1972.*

DATA PRODUCTS CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6774—Claimant awarded $575.50.)

ACME VISIBLE RECORDS, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed September *7, 1972.*

ACME VISIBLE RECORDS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6785—Claimant awarded $396.34.)

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed September *7, 1972.*

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6020—Claimant awarded $5,938.50.)

LICATA MOVING AND STORAGE COMPANY, d/b/a ADDISON VAN LINES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed September 8, 1972.

WARREN KRINSKY, Attorney for Claimant.

WILLIAM J. Scorn, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6278—Claimant awarded $9,921.86.)

CARGILL, INCORPORATED, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed September 8, 1972.

CARGILL, INCORPORATED, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6545-Claimant awarded $307.95.)

LINCOLN TOWER CENTER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 8, 1972.

LINCOLN TOWER CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6566—Claimant awarded $225.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed September 8, 1972.

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6454—Claimants awarded $29.40.)

ROGER STEVENS, J. WILBUR CAMPBELL, ELEANOR L. BARNAL, WILLIAM D. SCHAFER AND WILLIAM STEPHEN BRAY, Claimants, *vs.* STATE OF ILLINOIS, JERSEY COUNTY EDUCATIONAL SERVICE REGION, Respondent.

Opinion filed September 11, 1972.

O. A. WILSON, JR., Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* **appropriation. When the appropriation from which a claim should have been paid** has **lapsed, the Court will enter an award for the amount due claimant.**

PERLIN, C.J.

(No. 5631—Claim denied.)

CLYDE DIAL CONSTRUCTION, INC., Claimant, *vs.* **STATE OF** ILLINOIS, Respondent.

Opinion filed July 14, 1972.
Petition *of Claimant for* **Rehearing denied September 18, 1972.**

DOWNING, **SMITH,** JORGENSEN **AND UHL,** Attorney for Claimant.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. WEBBER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*damage to* **property. Where claimant was unable to show negligence on the part of the respondent, mere fact of damage was not sufficient to warrant an award.**

HOLDERMAN, J.

Complaint alleges that on the 2nd day of September, **1968,** claimant, Clyde Dial Construction, Inc., contractor, was doing work at the Lincoln State School.

Complaint alleges that a **1951** Chevrolet **1½** ton flat bed truck, which was used as a compressor truck, was parked upon the grounds of the Lincoln State School where the work was being done.

Complaint further states that on the 2nd day of September, **1968,** during the night, the truck was broken into, gasoline was poured on the cab of the truck and set afire, resulting in damages in the amount of $735.50.

Complaint alleges that one Brad Davis, an inmate at the Lincoln State School, was responsible for breaking into the cab of the truck and setting the fire.

Brad Davis, an eighteen year old inmate of Lincoln State School, testified that he was at the school in

September, **1968,** and he had been there since **1965.** He testified that he had burned the truck of the claimant after he had gotten out of the building. He further testified that he had used gasoline in burning the truck, which gasoline he had obtained from a tank near a coal pile and used matches which he had found in the glove compartment of the truck.

Davis further stated that he had attempted to break into the truck the night before but only shattered the glass.

Another witness testified on behalf of the claimant that this truck was located near the power house and that it was constantly used on the project. He also testified that on the day before the fire, he had noticed the left vent glass in the cab had been shattered. This supported the statement originally given by Brad Davis that he had shattered the glass earlier, before the fire had been set.

The State did not introduce any evidence.

There were not any allegations of negligence on the part of the State in the Complaint and there is no record of prior escapes or absences by Brad Davis.

The petitioner relies on those cases previously decided by the Court of Claims, such as ***U.S. Fidelity and Guaranty*** Co. vs. ***State of Illinois, 23*** C.C.R. **188 (1960).**

This line of cases is to the effect that if the claimant makes a prima facia case and the respondent offers no evidence as to the circumstances surrounding the facts, it will be assumed that the claimant has sustained the burden of proof.

There is not any evidence in the record to prove that the State knew, or should have known, of any inclination on the part of the inmate, Brad Davis, to engage in the activity which resulted in the damage to the claimant.

Further, there is no allegation of any negligence on the part of the State nor is there any proof of any negligence on the part of the State.

Mere proof that the student did commit the act, coupled with the broken window which indicated an attempt to get into the truck the day before, is not sufficient to put the respondent on notice. The Court therefore holds that the claimant failed to sustain its burden of proof and failed to establish a prima facie case of negligence.

As stated before, the original Complaint did not contain any allegation of negligence although claimant, in its Brief, cited five acts of negligence and it is impossible to determine what theory the claimant proceeded on at the Hearing, whether upon the ordinary negligence theory or the escaped inmate theory. It was not until the Briefs were read that the theory the claimant was proceeding on became clear or known to the respondent, who answered the belated allegations of acts of negligence in its Brief.

In our opinion, the contentions made by respondent in these briefs are correct.

In passing, it is worthwhile to note that the Hearings were held at the Lincoln State School and the records of Brad Davis were available to both parties.

It is the opinion of the Court that claimant has not proved by a preponderance of the evidence the elements necessary to recover and an award is therefore denied.

(No. **6150—Claimants awarded $316.50.)**

BERTRAM AND MAVARA MIMS, Claimants, *vs.* **STATE OF ILLINOIS, Respondent.**

***Opinion filed September 19,* 1972.**

BERTRAM AND MAVARA MIMS, Claimants, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

DAMAGES—*stipulation.* **Where claimant and respondent stipulate to facts and damages an award will be entered accordingly.**

PERLIN, C.J

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

THIS COURT **FINDS** that this claim arises by reason of a misunderstanding concerning insurance coverage.

IT IS HEREBY ORDERED that the sum of $316.50 be awarded to claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 6526—Claimant awarded $654.71.)

MASON & MEENTS CONSTRUCTION COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed September 19, 1972.

MASON & MEENTS CONSTRUCTION COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* **When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.**

PERLIN, C.J.

(No. 6576—Claimant awarded $8,991.00.)

CENTRAL YMCA HIGH SCHOOL, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed September 19, 1972.

CENTRAL YMCA **HIGH SCHOOL,** Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, *for* Respondent.

CONTRACTS—*lapsed* **appropriation. When the appropriation from which a**

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6658—Claimant awarded $383.00.)

CHARLES H. MAHONE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 19, 1972.

CHARLES H. MAHONE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, **C.J**

(No. 6663—Claimant awarded $35.00.)

PAUL A. HAUCK, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed September 19, 1972.

PAUL A. HAUCK, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6711—Claimant awarded $200.00.)

MARIAN HADDAD, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed September 19, 1972.

MARIAN HADDAD, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6734—Claimant awarded $215.00.)

GERALD MCDANIEL, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed September 19, 1972

GERALD MCDANIEL, Claimant, **pro** se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6824—Claimant awarded $70.30.)

ROBESON'S DEPARTMENT STORE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 19, 1972.

ROBESON'S **DEPARTMENT STORE,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6825–claimant awarded $36.00.)

DA-COM CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed September **19, 1972.**

DA-COM CORPORATION, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6478—Claimant awarded $15,160.95.)

THE **PERKINS & WILL PARTNERSHIP, An Illinois Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed September 22, 1972.

WILLIAM J. HURLEY, Attorney for Claimant.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6529—Claimant awarded $173.40.)

APPROVED' HOME, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September **11, 1972.**

KREGER AND **KARTON,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6613—Claimant awarded $10,784.81.)

LITTLE COMPANY OF MARY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 22, 1972.

LITTLE COMPANY OF MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6661—Claimant awarded $135.00.)

B. U. CHUNG, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 22, 1972.

DR. B. U. CHUNG, Claimant, pro se.

WILLIAM J. *Sco-rr*, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6716—Claimant awarded **$30.68.**)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed September 22, 1972.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriutwn. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6721—Claimant awarded $133.02.)

ATLANTIC RICHFIELD COMPANY, Claimant, ***us.*** STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed September **22, 1972.**

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6741—Claimant awarded $1,516.80.)

AMERICAN OIL COMPANY, Claimant, ***us.*** STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed September **22, 1972.**

AMERICAN OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6749—Claimant awarded $814.80.)

MARYVILLE ACADEMY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, **Respondent.**

Opinion filed September 22, 1972.

MARWILLE ACADEMY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5460—Claimant awarded $11,094.26.)

ROBERT F. JERRICK, Claimant, *vs.* STATE OF ILLINOIS, **Respondent.**

Opinion filed November 9, 1971.
Petition of Respondent for Rehearing denied October 10, 1972.

RAYMOND L. MCCLORY, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; MORTON ZASLAVSKY, Assistant Attorney General, for Respondent.

MAGISTRATE—*Salary.* Where a village raised the salary of magistrate one month prior to state assuming responsibility for salary, state had to pay at new salary rate.

HOLDERMAN, J.

In 1958, the claimant, Robert F. Jerrick, was appointed Police Magistrate of the City of Berwyn to fill a vacancy. In 1959, he was elected to that office, and on April 2, 1963, he was reelected.

At the time of his reelection on April 2, 1963, his annual salary was $5,000.00. On March 26, 1963, which was prior to claimant's reelection to a new term of office, the City Council of the City of Berwyn, passed an ordinance raising the annual salary of Police Magistrates, but deferred the effective date of the increase to December 1, 1963. The

ordinance was approved on March 28, 1963, and reads as follows:

"That commencing on the 1st day of December, 1963, and thereafter, the Police Magistrate shall receive and be paid a yearly salary in the sum of Eight Thousand Four Hundred ($8,400.00) Dollars annually, payable in monthly installments of Seven Hundred ($700.00) Dollars each."

On January 1,1964, a new Judicial Article of the Illinois Constitution of 1870, providing for the reorganization of our Courts, went into effect. The schedule of the said Judicial Article provides in part as follows:

"Paragraph 4: Each supreme court judge, circuit court judge, superior court judge, county judge, probate judge, judge of any city, village or incorporated town court, chief justice and judge of any municipal court, justice of the peace and police magistrate, in office on the effective date of this Article, shall continue to hold office until the expiration of his term, as follows: . . .

"(e)Police magistrates and justices of the peace shall be magistrates of the several circuit courts, and unless otherwise provided by law, shall continue to perform their non-judicial functions for the remainder of their respective terms.

"Paragraph 5: On the effective date of this Article,

"(a) All justice of the peace courts, police magistrate courts, city, village, and incorporated town courts, municipal courts, county courts, probate courts, the Superior Court of Cook County, the Criminal Court of Cook County and the Municipal Court of Chicago, are abolished and all their jurisdiction, judicial functions, powers and duties are transferred to the respective circuit courts, and until otherwise provided, by law, non-judicial functions vested by law in county courts or the judges thereof, are transferred to the circuit courts; . . ."

As a consequence of reorganizing the mentioned courts, the State of Illinois assumed payment of salaries to justices of the peace and police magistrates. It became necessary for the Administrative Office of the Illinois Courts to locate all justices of the peace and police magistrates whose terms had not expired on the effective date of the Judicial Article. Sec. 17 of Article VI of the Constitution provides for the payment of salaries to these hold-over justices of the peace and police magistrates, who became magistrates of the Circuit Court, as follows:

"Judges and magistrates shall receive for their services salaries provided by law. The salaries of judges shall not be diminished during their respective terms of office. Judicial officers may be paid such actual and necessary expenses as may be

provided by law. All salaries and expenses shall be paid by the State, except that judges of the Appellate Court for the First District and circuit and associate judges and magistrates of the Circuit Court of Cook County shall receive such additional compensation from the county as may be provided by law."

The salary "provided by law" pursuant to Sec. 17 for hold-over magistrates is set forth as follows in the Ch. 53, Secs. 8.1 through 8.3, Ill.Rev.Stat., 1963:

"8.1. For the remainder of his term each police magistrate or justice of the peace who becomes a magistrate of the circuit court pursuant to Paragraph 4 (e) of the Schedule of Article VI of the Illinois Constitution shall be paid out of the State Treasury a salary at the annual rate, which immediately prior to January 1, 1964, was payable to him by the County in case of a justice of the peace, or by the municipality in the case of a police magistrate.

"8.2. The municipal treasurer in the case of a police magistrate and the county treasurer in the case of a justice of the peace shall, on or before November 1, 1963, certify to the Auditor of Public Accounts the name and annual salary being paid to any such police magistrate or justice of the peace.

"8.3. The provisions of Sec. 1 of this Act shall take effect on January 1, 1964. The provisions of Sec. 2 shall take effect upon the approval of this Act by the Governor."

With reference to Sec. 8.2, the following was stipulated by claimant and respondent:

"That on October 29,1963, the controller of the City of Berwyn, Theodore F. Kozak, did mail to the Auditor of Public Accounts, Springfield, Illinois, a certification as follows:

"This is to certify that prior to January 1, 1964, the salary of Judge Robert F. Jerrick, of the City of Berwyn, Illinois, was $8,400.00 per annum."

Notwithstanding the above stipulation, the State of Illinois paid claimant during the remainder of his unexpired term from January 1,1964, to April 10,1967, a salary at the annual rate of $5,000.00 or $416.66 per month.

Claimant cashed the pay checks as received, but did so under protest. He voiced his protests in writing by letters to the Supreme Court Administrative Office and to the Auditor of Public Accounts, Michael J. Howlett. Claimant contended that he was not being paid the salary due him under the above quoted Ch. 53, Sec. 8.1, Ill.Rev.Stat., 1963; that "the annual rate, which immediately prior to January 1,1964, was payable to him" by the City of Berwyn was $8,400 or $700.00 per month.

It seems to us that claimant's contention is justified by the plain language of the statute in question. There are no ambiguous terms in the statute, which would warrant any interpretation other than literal, based on the actual words in their ordinary meaning.

The respondent contends that the "annual rate of salary payable immediately prior to January **1,1964''** should mean the amount received for the largest portion of the year; and that "immediately prior" means the November first certification date or some other date prior to December first. The plain language of the statute does not permit such construction. Rate by definition is a measure by comparing one thing to another at a given point in time. In this instance, by comparing dollars to years. "Annual rate" does not, as respondent contends, mean the rate at which claimant was actually paid for the entire year. Prior to December first, claimant was paid at the rate of $5,000.00 per year. After that date, the rate was $8,400.00 per year. This rate was established by the Berwyn City Council prior to claimant's reelection to a new term of office. Had the legislature intended the yardstick to be the average rate, it would have so stated. "Immediately prior to January **1, 1964"** may encompass various periods depending upon the context of the case. In this case, the clear meaning is that increment in time, which preceded January **1,1964,** during which a rate could be determined or for which no change in rate occurred. November **1,** or for that matter the last day of November, could not have been "immediately prior to January **1"** because a change of rate occurred afterwards, which was still prior to January **1.** Therefore, the next increment of time had to be the one immediately prior. Again, had the legislature intended November **1,** instead of "immediately prior to January **1,"** it would have so stated.

Respondent further contends that this Court would be

warranted in finding that the action by the Berwyn City Council in raising claimant's salary just one month before the effective dates of the Judicial Article was an attempt to defraud the State. This is a serious charge. Improper motives, bad faith, or a purpose to disregard sound public policy must not be attributed to any lawmaking power except on the most cogent evidence. 50 ***Am. Jur. Stuts.*, Secs. *381, 382, 383.*** Respondent offered absolutely no evidence to support its charge of an intent on the part of the Berwyn City Council to defraud the State. How, then, can it ask this Court to indulge in such a presumption?

It is the duty of the courts to impute proper motives to those who exercise legislative power. In this case, claimant offered a plausible explanation for the action of the Berwyn City Council based on economic considerations.

We find that, by virtue of the ordinance of the City of Berwyn, passed on March **26, 1963,** and approved March **28, 1963,** the plain language of Ch. **53,** Sec. **8.1,** Ill.Rev.Stat, **1963,** requires a determination that **$8,400.00** was the annual rate, which was payable to claimant immediately prior to January **1, 1964,** by the municipality.

He is, therefore, entitled to recover the sum of **$11,094.26,** being the amount of the difference in the salary he received, and that which he should have received from January **1, 1964,** to April 10, **1967.**

The claimant, Robert J. Jerrick, is hereby awarded the sum of **$11,094.26.**

(No. **6773—Claimant awarded $12,931.96.**)

NORTHEAST COMMUNITY HOSPITAL, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

***Opinion filed September 22,* 1972.**

NORTHEAST COMMUNITY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6786—Claimant awarded $463.50.)

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed September **22, 1972.**

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, **C.J.**

(No. 6842—Claimant awarded $990.57.)

SPRINGFIELD MECHANICAL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September **22, 1972.**

SPRINGFIELD MECHANICAL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriotion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. **6257—Motion to Dismiss the Stipulation Allowed. Motion to** Dismiss **denied.)**

ATKINS, BARROW AND GRAHAM, INC., Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed October 10, 1972.

D. **V.** DOBBINS, DOBBINS, FRAKER & TENNANT, Attorney for Claimant.

WILLIAM J. **SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

AGENCY—*Illinois Building Authority* **is** *a body corporate and politic and not a State agency.* **That a body corporate and politic may not be sued in the Court of Claims and can only be sued in an action** of **law.**

HOLDERMAN, J.

This matter is before the Court on a motion filed by the State to disregard a joint stipulation previously entered into between claimant and the State of Illinois and which motion requested dismissal of the Complaint. Claimant has filed objections to the motion.

Claimant requests payment in the sum of **$1,950** for architectural services rendered by it in connection with the construction of a building at Jackson State Hospital erected by the Illinois Building Authority. Claimant had a contract with Illinois Building Authority to render services and was paid for all services rendered except for the additional services forming the basis for this claim.

A Joint Stipulation was entered into between claimant and the Assistant Attorney General consenting to entry of an award in the amount of **$1,950.** The theory of the claimant was that the refusal for payment was solely due to the fact that funds appropriated had lapsed.

In connection with the Motion to Disregard the Stipulation, the State contends that the Stipulation was erroneous and argues that since the Illinois Building Authority was a "body corporate" that any action for such

services would lie in an action at law and not in a claim before the Court of Claims.

In response, the claimant argues that the State is bound by the Stipulation and should not be permitted to "weasel out of an agreement made by them" and that Counsel was now "crawfishing." We are not impressed by the claimant's personal attack on the Attorney General in his effort to disregard the Stipulation.

This Court feels that if the extra services were rendered to the Illinois Building Authority that the position of the Attorney General would be correct notwithstanding the Stipulation.

Where there is an adequate remedy at law, the Court of Claims has no jurisdiction. *Denton* vs. *State,* 22 C.C.R. 83.

The Illinois Building Authority is a "body corporate and politic" (Ch. **127,** Sec. **213.1,** Ill.Rev.Stat., **1969).** It is not a "State agency" *(The People* vs. *Barrett, 382* Ill. 321, 46 N.E. 2d 951) *(Berger* vs. *Howlett, 25* Ill. 2d 128, 182 N.E. 2d. 673).

However, it is contended by the claimant that the services were rendered not to the Illinois Building Authority but to the Department of Mental Health. If this is true, then the Claim would properly be brought before the Court of Claims for allowance.

There is no dispute as to the services rendered nor as to the amount of charge made. The Court feels, however, that the State is entitled to a hearing on whether the services were rendered under the contract with the Illinois Building Authority or whether they were rendered to the Department of Mental Health directly and not as part of the contract.

There is in the file, correspondence indicating that the

Department of Mental Health actually contracted for the services. However, there is evidence that the Claim was presented to the Illinois Building Authority which refused to pay it.

The Motion to Dismiss the Stipulation is therefore allowed, but the Motion to Dismiss is denied.

This matter is remanded for hearing solely on the question of whether the services were rendered to the Illinois Building Authority or to the Illinois Building Authority or to the Department of Mental Health and for a decision in accordance with the evidence at the hearing and consistent with this decision.

(No. 6276—Claimant awarded $128.50.)

UNITED TRAVEL SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed October *10, 1972.*

UNITED TRAVEL SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6544—Claimant awarded $14,145.00.)

UNIVAC, DIVISION OF SPERRY RAND CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, AUDITOR OF PUBLIC ACCOUNTS, Respondent.

Opinion filed October *10, 1972.*

UNIVAC, DIVISION OF SPERRY RAND CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6615—Claimant awarded $54.71.)

ACE HARDWARE NO. 156, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed October 10, 1972.

ACE HARDWARE NO. 156, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6628—Claimant awarded $56.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed October 10, 1972.

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6706—Claimant awarded $1,494.00.)

WILLA MAE AUSTIN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed October 10, 1972.

KLEIMAN, CORNFIELD & FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6727—Claimant awarded $2,263.31.)

ST. JOSEPH HOSPITAL, Claimant, *vs.* STATE OF **ILLINOIS,** DEPARTMENT **OF** MENTAL HEALTH, **Respondent.**

Opinion filed October 10, 1972.

ST. JOSEPH HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6740—Claimant awarded $109.75.)

MRS. ROBERT MARKS, Claimant, *vs.* STATE OF **ILLINOIS,** DEPARTMENT **OF PUBLIC AID,** Respondent.

Opinion filed October 10, 1972.

MRS. ROBERT MARKS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6743—Claimant awarded $1,308.00.)

RAYMOND L. TERRELL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion filed October 10, 1972.

RAYMOND L. TERRELL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6791—Claimant awarded $1,468.25.)

CARRIE M. WEBSTER, As the Widow of and on behalf of the Estate of ROBERT S. WEBSTER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed October 10, 1972.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6843—Claimant awarded $213.26.)

BETTY A. ADDANTE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed October 10, 1972.

KLEIMAN, CORNFIELD & FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6846—Claimant awarded $949.00.)

JOAN COCHRANE, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed October 10, 1972.

KLEIMAN, CORNFIELD & FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6881—Claimant awarded $10.30.)

HOWARD JOHNSON'S MOTOR LODGE SOUTHEAST, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, Respondent.

Opinion filed October 10, 1972.

HOWARD JOHNSON'S MOTOR LODGE SOUTHEAST, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6858–Stipulation to dismiss allowed.)

ROSALIE FRAZIER, Individually, and ROSALIE FRAZIER as Mother, Next Friend and Natural Guardian of DEBBIE KAY FRAZIER, A Minor Child, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1972.

HANAGAN, DOUSMAN AND GIAMANCO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

COMPLAINT—*grounds for* dismissal. Where claimant inadvertently filed complaint with errors and omissions as to required allegations, leave would be granted to file amended complaint.

CAUSE OF ACTION—*exhaustion of* remedies. Before an action can be brought the claimant must exhaust all other remedies and sources of recovery.

BURKS, J.

ORDER

Denying Respondent's Motion to Dismiss and Granting Claimant leave to file an Amended Complaint

This matter is now before the court on respondent's motion to dismiss. Said motion was filed on September 19, 1972. We also have before us claimant's objections to said motion filed on September 25, 1972.

This court finds that respondent has correctly stated proper grounds for dismissal of this complaint under the rules of this court. However, claimant has submitted a reasonable explanation for the errors and omissions in the complaint as to certain required and essential allegations concerning the claim previously filed with the Industrial Commission and the award previously received by the claimant arising out of the same occurrence.

The court is satisfied, as stated in claimant's motion, that the said errors and omissions were wholly inadvertent, not intentional, and that claimant had no intent to seek a double recovery on a claim arising out of the same

occurrence. Respondent's motion to dismiss will be denied, and claimant will be granted leave to file an amended complaint in compliance with the rules of the Court of Claims. We particularly call claimant's attention to Para. **A-4** of Rule **5** referred to in Para. **5** of respondent's motion. It appears from the pleadings that Aetna Casualty and Surety Company may, in effect, be the sole owner of this claim since any supplemental amount that might be awarded by this court would be subject to the lien of said company. The following explanation of the court's views on this point should be included in this order.

The court has in no way considered the merits of this claim. We have noticed that the complaint purports to state a cause of action against the respondent for wrongful death; and that it contains two separate counts asking $25,000 for the benefit of the decedent's widow and an additional $25,000 for the benefit of the decedent's minor child.

Section 2 of the wrongful death statute ***(Ch.*** 70, *Sec.* **2,** *Ill.Rev.Stat.,* ***1971,)*** states that a wrongful death action "shall be brought by the personal representatives of the deceased person" and that "the amount recovered in such action shall be for the exclusive benefit of the widow ***and*** next of kin . . .". It further provides that the amount recovered in such action "shall be distributed by the court to each of the widow and next of kin . . . .". The statute obviously does not authorize a separate cause of action by the widow and by the next of kin. While the limitation on the amount of a judgment has been eliminated from the wrongful death act, the limitation in Sec. 8(d) of the Court of Claims Act was in effect on the date of decedent's death. Said section at that time imposed a limit of $25,000 on the amount of any award that may be granted by this court in any case sounding in tort.

Assuming that claimants could prove in this court that

they are entitled to the maximum award of $25,000, Sec. 26 of the Court of Claims Act states that "any recovery awarded by the court shall be subject to the right of set-off of an amount equal to the monies received from any other source".

Since claimants were previously awarded death benefits for the death of the decedent in the amount of $19,950 by the Illinois Industrial Commission on February 14, 1972 (No. 71 WC 27459), the set-off of this amount would reduce the maximum award possible by this court to $5,050. Said remaining amount apparently would be payable to Aetna Casualty & Surety Company in satisfaction of its lien against any award from a third party (the respondent) pursuant to Sec. 5(b) of the Workmen's Compensation Act (*Ch. 48, Sec. 138.5(b), Ill.Rev.Stat., 1971*). This is confirmed by Para. 7 of claimants' motion which reads in part as follows:

> **"Aetna Casualty & Surety Company, the Workmen's Compensation carrier** for **Culberson Construction Company, Inc., under Section 5(b)** of **the Illinois Workmen's Compensation Act, will have a lien in the amount** of **$19,950.00 on any recovery claimant is awarded under the case filed in the Court** of **Claims** of **the State** of **Illinois."**

Section 25 of the Court of Claims Act requires the claimant to exhaust all other remedies and sources of recovery for the same injuries *or* for the wrongful death of a decedent before an award may be entered by this court. Then Section 26 requires the court to set-off the amount received from any other source from the amount of any award based on the same cause of action. These sections can only be interpreted to mean that an award by this court is not to be made in addition to, but exclusive of, any death benefits or other compensation otherwise payable by law.

This differs from Sec. 5(b) of the Workmen's Compensation Act which does not require the claimant to exhaust other remedies or causes of action he may have

against third parties who may also be legally liable for the same injury or for the wrongful death. If he does so, however, his employer's compensation carrier has a lien on the amount of the recovery from a third party as stated in claimants' motion.

IT IS HEREBY ORDERED that respondent's motion to dismiss be, and the same is, hereby denied.

IT IS FURTHER ORDERED that claimant be, and is hereby, granted leave to file an amended complaint in compliance with the rules of the court, and that said amended complaint shall be filed within thirty days from the date of this order.

(No. 5193—Claimant awarded $4,130.34.)

KRUEGER CONSTRUCTION CO., INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 19, 1972.

FREDERICK R. PEFFERLE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER and LEE MARTIN, Assistant Attorneys General, for Respondent.

CONTRACTS—*unit* price. Where unit price contract called for payments for quantities of dirt actually used, claimant was entitled to payment for all dirt he delivered.

CONTRACTS—*claims for extras*. Where claimant performed additional work without obtaining a written order, no payment would be made for that additional work.

BURKS, J.

This claim arises out of a contract entered into between the claimant and the respondent in 1959 for the resurfacing of the mile track and the half mile track at the Illinois State Fair Grounds in Springfield.

The amounts claimed are, allegedly, for additional

material deposited on the one mile track, the stockpiling and rehandling of material, and the blading of the half mile track. Claimant contends that these additions to the contract were made at the request of the respondent's Chief of Construction for the Department of Public Works and Buildings, Division of Architects and Engineers, or by the "associate engineers" employed by the State of Illinois for this project.

Only questions of fact are involved in this case. They relate to the following matters which are in dispute:

1. The quantity of **dirt furnished by claimant to resurface the mile track;**

2. Whether or not claimant is entitled to additional compensation for expenses incurred in stockpiling and rehandling some of the dirt;

3. Whether or **not claimant is entitled to additional compensation for blading the half mile track.**

These three areas of dispute must be resolved by a careful examination of the evidence in the record. We will summarize only the testimony presented which we regard as controlling on each of the three issues.

First, we consider the dispute between the parties **as** to the quantity of dirt furnished by claimant to resurface the mile track.

Mr. Orlando A. Krueger, Secretary of the claimant corporation, testified that he was the operations supervisor for the claimant and supervised the State Fairgrounds job. He said that the material placed on the tracks was taken from borrow pit sites selected by claimant and approved by the firm of Jenkins, Merchant and Nankivil, consulting engineers for the respondent. This firm is also referred to in the record as associate engineers.

Mr. Krueger testified that on the 6th of June, 1960, after the one mile track had been resurfaced, he made a cross-section of the borrow pits to determine the quantity of

material excavated from the pits and placed on the track. Using his field notes and a Frieden calculator, he calculated that claimant removed from the borrow pits and spread on the mile track 10,444 cubic yards of dirt. On the witness stand he explained his method of calculation and introduced into evidence his cross-sections and field notes which were the foundations for his calculations. (Claimant's Exhibits **1, 2, 3** and **4.)**

No witness for the respondent attacked either the cross-sections or the field notes presented by Mr. Krueger. Mr. Carter Jenkins, one of respondent's associate engineers, **testified that the State also made cross-sections of the** borrow pits **in** July and August, **1960,** and determined that **8,688** cubic yards of material were placed on the mile track. This is the figure allowed claimant by the associate engineers. The State's cross-sections were not introduced into evidence nor were the persons who made them called as witnesses. Mr. Jenkins merely testified that, according to the State's figures, **8,688** cubic yards of dirt were used and he denied claimant's contention that **10,444** cubic yards were used.

On re-direct examination Mr. Krueger testified that the State's cross-sections were made after the borrow pits had been flooded by a spring creek running through the area; that the flooding occurred on June **21,1960;** that it lasted for a week; that the flooding washed substantial quantities of material into the borrow pits, and that the State's cross-sections, made after such flooding, could not be used as a basis for determining the volume of dirt removed in the contract operations. This telling argument was not denied by the respondent.

There is sufficient evidence in the record to justify our finding that claimant did in fact furnish **10,444** cubic yards of dirt for the mile track rather than the **8,688** cubic yards

allowed by the State. We find that claimant has sustained the burden of proof on this point; that a total of 10,444 cubic yards of material was actually required, which is 1,756 cubic yards over and above that allowed by the associate engineers.

The written agreement between the parties was not a lump sum contract. It was a unit price contract calling for payment at the unit price for the quantities of materials actually used. At the agreed unit price of $2.20 per cubic yard, we find that the claimant should have been paid an additional sum of $3,863.20 for the additional 1,756 cubic yards of dirt actually used in the project.

The second area of dispute concerns the stockpiling and rehandling of material for the tracks, and whether claimant is entitled to additional compensation for this procedure.

Mr. Krueger testified for the claimant that on January 5, 6, 7 and 8, 1960, dirt was taken from the pits and stockpiled in the paddock area at the request of the respondent's associate engineers; that nothing useful was accomplished by this stockpiling; that it was uneconomical to do; that it involved using a machine to stack it up and make a pile of it, instead of dumping it directly on the track as claimant would normally do.

By invoice dated August 23, 1960, claimant billed the respondent for said additional work. The statement (claimant's Exhibit 11) showed a charge in the amount of $2,660.00 for rehandling 2,800 cubic yards of dirt; $316.80 for 176 hours of overtime; $47.52 for overhead; a total additional payment of $3,326.97 was requested by the claimant. There is an apparent error in the overhead item but this is not material to the main issue before us.

Mr. James N. Gaunt, who was respondent's Chief of

Construction for the Department of Public Works and Buildings at the time that the contract in question was being performed, was called as a witness and testified for the claimant. Mr. Gaunt's employment with the State having been terminated in **1962,** he had no access to respondent's records when he testified at the hearing on July **1, 1965.**

Mr. Gaunt said he did not believe that stockpiling of material was required by the contract; that the stockpiling procedure was ordered by a Mr. Carl **Funk** who worked for respondent's consulting engineers; and he gave the following answer to a question from claimant's attorney:

"Q And this was (stockpiling) a precautionary measure also to insure that the work would be completed by State Fair time?

"A Well, they had a great deal of it stockpiled. We had several good projects going on up in the northern part of the State, and I was up there part of the time. Then I took a vacation and when I came back the bulk of it was done. I questioned the associate engineer as to why they were doing it and he said he didn't want to get caught out there with the borrow pit full of water and not get done by Fair time. I said you obligated the State for a lot more cost. He said, Oh, hell, I don't care what it costs." (from transcript - page 55)

Mr. Gaunt's testimony was categorically denied by Mr. Carter Jenkins, member of the associate engineers, who testified for the respondent. Mr. Jenkins stated that no member of his firm authorized the stockpiling, and that claimant did it for his own convenience because the borrow pits selected were subject to flooding.

The following question **by** claimant's attorney and the answer by Mr. Jenkins appears at page **43** of the transcript of the second hearing:

"Q Mr. Jenkins, weren't you yourself concerned about the flooding of the borrow pits and so concerned that you, in fact, requested representatives of Krueger Construction Company to stockpile this dirt during periods of time that they could get into the borrow pit area?

"A No, sir, at no time whatsoever was it ever done by me or any of our representatives. We were surprised one day to find that he had started stockpiling operations. I believe that, under the specifications, the stockpiling would be permitted but would be included in the cost bid for the work to be performed."

Mr. Jenkins apparently had reference to the following section of the contract specifications:

"23025. If at the time of excavation, it is not possible to place material in its proper section of the permanent construction, and Supervising Architect so directs, it shall be stockpiled in approved areas for later use." (Claimant's Ex. 13, page RS-5)

The oral testimony in the record on this point at issue is completely contradictory. However, we do not need to weight the credibility of either witness to resolve this question.

Whether Mr. Jenkins' employee, Carl Funk, ordered the stockpiling or whether it was initiated by claimant, there is nothing in the contract documents to call for extra compensation for this work. In fact, we interpret the following section 23027 of the specifications to mean that payment at the contract unit price per cubic yard for the total of all material moved covers all aspects of the work.

"23027. Payment for excavation will be made at the contract price per cubic yard for the total of classified or unclassified material excavated and moved in accordance with the plans and specifications or as otherwise specifically directed by the Supervising Architect. The payment for excavation shall constitute full compensation for excavation, hauling, spreading and compacting material in embankment, smoothing graded surfaces, stripping vegetation, removal of all undesirable material, scarifying and recompacting ground surfaces under embankment and all other subsidiary grading operations not specifically set up in the contract as pay items including the furnishing of all labor, equipment, tools and incidentals necessary to complete the work."

The above section 23027 cannot be lifted out of context for purposes of interpretation. It must be read as an integral part of the entire contract and in connection with other provisions thereof which state conditions precedent to the allowance of any additional compensation. We refer to the following provisions under "General Conditions of the Contract":

"ARTICLE 22:, CHANGES IN THE WORK: (Para. 2)

No change shall be made, unless in pursuance of a written order from the Supervising Architect, stating that the Owner has authorization for the change,

and no claim for an addition to the Contract shall be valid unless so ordered." (Claimant's Exhibit 13, p. 10)

"ARTICLE 23: CLAIM FOR EXTRAS:
If the Contractor claims that any instructions, by drawings or otherwise, involve extra cost under this contract, he shall give the Supervising Architect written notice thereof before proceeding to execute the work, and, in any event, within two weeks of receiving such instructions. No such claims shall be valid unless so made." (Claimant's Exhibit 13, p. 11)

Claimant failed to produce either a written order as required by Article 22 or the advance written notice before proceeding with the alleged extra work as required by Article 23. The absence of such required written evidence confirms our interpretation of section 23025 as stated above. Therefore, claimant's claim in the amount of $3,326.97 for stockpiling dirt must be denied.

The third and final issue of fact is whether or not claimant is entitled to additional compensation for blading the half mile track.

The record fully supports our finding that the blading of the half mile track was additional work authorized by respondent's Chief of Operations, James N. Gaunt, and that the work was done by the claimant at Mr. Gaunt's direction. The reason advanced for blading the half mile track was to get the horses off of the mile track while it was under repair and provide them with a place for training. The work was also requested by the Department of Agriculture.

Respondent's former Chief of Operations, Mr. James N. Gaunt, testified that $573.60 was a fair and reasonable charge for this additional work, and the court accepts his statement.

On the three issues presented in this cause, the court states its conclusion as follows:

1. That claimant should be awarded the sum of $3,863.20 for an additional 1,756 cubic yards of dirt used in

resurfacing the mile track as claimed in the complaint;

2. That claimant's claim for stockpiling dirt must be denied; and

3. That claimant should be awarded the sum of **$573.60** for blading the half mile track, less the sum of **$306.46** acknowledged by claimant to be an overpayment for cubic yards of dirt used on the half mile track.

Accordingly, the claimant, Krueger Construction Co., Inc., is hereby awarded the total sum of **$4,130.34.**

(No. 5464—Claimant awarded $6,000.00.)

JEROME TYLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 19, 1972.

GROSSMAN, KASAKOFF, MAGID AND SILVERMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*Wrongful incarceration.* Before an award will be made for wrongful incarceration, the claimant must prove by a preponderance of evidence (1) that the time served in prison was unjust; (2) that the act for which he was wrongfully imprisoned was not committed by him; and (3) the amount of damages to which he is entitled.

PERLIN, C.J.

Claimant seeks recovery of **$15,000** pursuant to the following provision of the Court of Claims Act (8C) which provides that the Court of Claims shall have jurisdiction to hear and determine:

"All claims against the State for time unjustly served in prisons of this State where the persons imprisoned prove their innocence of the crime for which they were imprisoned; provided the Court shall make no award in excess of the following amounts: For imprisonment of 5 years or less, not more than **$15,000**. . ."

The evidence introduced at the hearing reveals the following: Claimant, Jerome Tyler, was arrested on

December 31, 1963, on charges of robbery and rape. The offense allegedly occurred on November 16, 1963. On March 24,1964, he was tried without a jury, found guilty of the charges and was sentenced to the Illinois State Penitentiary for a period of not less than 10 nor more than 20 years for each crime, both sentences to run concurrently. After having served two years, eight months and twenty-eight days, he was released from prison on December 22, 1966.

The evidence reveals that during claimant's incarceration, his friend, Howard Burks, contacted the Office of the Cook County Public Defender, and gave them information that the claimant was with Burks and several others at the time that the robbery and rape allegedly occurred.

An investigation which was then carried out by the State's Attorney's Office established that the parties responsible for the crimes in question were Abraham Barker, Willie Stephens and Clifton Cates; that Abraham Barker entered an apartment occupied by one Oliver Carter and Eleanor Divers, committed the rape and robbery, taking a hi-fi set, and left while Clifton Cates and Willie Stephens waited outside. The investigation was made by Sheldon Schapiro, an Assistant State's Attorney and Frank Butler, Jr., a detective assigned to the State's Attorney's Office.

As a result of the investigation, a motion that a new trial be granted to claimant was made by the Public Defender's Office. The State's Attorney's Office confessed error and agreed to the granting of a new trial. After the order granting a new trial was entered, the State moved to nolle prosse the charges against the claimant, confessing that claimant was innocent of the charge, and the claimant was released from custody.

Schapiro testified as follows: He interviewed claimant in the Joliet Penitentiary, accompanied by Officer Butler and a court reporter. The claimant maintained his innocence and stated that the male complainant "had it in for him" because he had taken a girl friend away from him. Tyler, the claimant, said that his lawyer had instructed him to testify to a false alibi or he would be convicted. In the course of the investigation, it was discovered that the person who had committed the rape and robbery had a scar on his neck. Willie Stephens, who was not charged with the robbery or rape, came to Schapiro's office and admitted that he was involved in the crime. The statement and admission was received in evidence. Stephens stated that he was with a Mr. Barker, as well as some other individuals, on the night the rape and robbery occurred. None of them was Jerome Tyler. Stephens, Barker and the others went to the male complainant's house. Barker went upstairs with a toy gun and when he came down, he had a hi-fi set. During the interview it was discovered that Stephens had the same attorney as Tyler did at the time of Tyler's trial.

A statement of Charles Howard was obtained by Schapiro in which Howard testified that Stephens, Barker, and a man named Cates entered his apartment on the night. of the robbery and that after some negotiation with reference to the hi-fi set, the set was brought in and Howard paid them for it. It was later recovered by Officer Butler and was identified by the male complainant as the one stolen from him. Howard also told Schapiro that Jerome Tyler had nothing to do with the transaction. Further investigation showed that Barker had an extensive criminal record and had left town right after the rape and robbery. They then interviewed the male complainant, one Oliver Carter, who steadfastly maintained that Tyler had robbed him and raped the female complainant.

Schapiro and Butler also interviewed the female complainant, Eleanor Divers, who stated that Jerome Tyler was not the party who had raped her, and that she had testified that he was on the instructions of her boyfriend, the male complainant. She stated that the person who attacked her had a scar on his neck.

Schapiro stated that when Willie Stephens made his statement, he was advised that the statute of limitations had expired on the crimes alleged in the original indictments. Schapiro also told Stephens that if he chose to make a statement, it could be used against him in court and Stephens said he understood that.

The attorney who represented Tyler at the time of his trial also represented Stephens who was a suspect in the case, and the alibi to which Tyler testified exculpated Stephens of any involvement in the robbery and rape. That the attorney represented one client to the detriment of another is based on information given by Tyler to Schapiro. Schapiro had no knowledge of whether Stephens, Barker and Howard were social friends of Tyler.

Schapiro further testified that, in his opinion, claimant was innocent of the crime for which he was charged.

Howard Burks testified that he was claimant's friend and that on the night in question, claimant, Willie Hayes and Ernest Richards drove one Jessie King home. They proceeded to 744 Bowen Avenue, and were sitting in the car drinking when several police cars arrived in the vicinity where they were parked. Five minutes later, he saw Clifton Cates, Abraham Barker and Willie Stephens running up the street. They saw Burks' car and came over. The three said they hadn't done anything, but would tell them about it "at the party." All of the above mentioned people apparently went to a party at Jessie King's. Burks testified that Abraham Barker told him that he went upstairs to Oliver

Carter's apartment and robbed him of his hi-fi set, but that he left Cates and Stephens downstairs because Oliver Carter knew them. Burks further testified that Abraham Barker told him that he was going to sell the hi-fi set to Charles Howard. Burks stated that on the night the crimes were committed, claimant was never out of his presence from the time they left work until after Barker, Cates and Stephens came to the party.

Burks was questioned by the police after claimant was arrested and he stated that he told them "just what I have said here." Burks was never again contacted by the police, nor did he have any contact with claimant Tyler until he was released from prison. Burks stated that a month before the trial, he received a letter from Tyler asking Burks to get "all the help I could, all the people that were involved, and have them testify in his behalf so he could be released because we knew that he didn't have anything to do with the crimes."

Burks stated that neither he nor any of the other persons who were in the car or at the party were called as witnesses. Burks said that after he heard Tyler had been convicted and sentenced for the crime, he told claimant's mother that "we would do everything we could to get the man released." Burks further testified that he knows that Jerome Tyler does not have a scar on his neck and that Abraham Barker does have a scar on his neck. On cross examination, Burks testified that he told police that Barker was the man they were looking for on the same day that they picked up Jerome Tyler. Burks stated that he worked with Willie Stephens, Clifton Cates, Arthur Sims and Oliver Carter, and that these people and Jerome Tyler and Abraham Barker were friends. Burks said that he was present at the court trial of Jerome Tyler and that he told the attorney for Tyler that he wished to testify. Tyler's attorney refused to call him and said "he already had his

case." Burks stated that he was unable to hear all the testimony at the trial because he was "too far back." Burks stated during cross examination, that he was not aware that he could have gone to the State's Attorney with his statement.

Frank Butler, Jr. testified that he was a Chicago police officer for 11 years and had been assigned to the State's Attorney's Office for 8 years. He stated he was assigned by his superior to re-investigate the claimant's conviction; that he contacted one Willie Stephens and interviewed him in a tavern. The next day, Willie Stephens came to the State's Attorney's Office where he gave a statement that did not implicate Jerome Tyler in the incident, but he did implicate Clifton Cates and Abraham Barker. Butler took a statement from Eleanor Divers who, when shown a picture of claimant, stated that he was not the man who raped her. When she was shown a picture of Abraham Barker, she stated that she was not sure if it was he. Officer Butler further testified that he interviewed Oliver Carter, the male complainant, who maintained that Jerome Tyler committed the crimes in question. Butler examined Jerome Tyler at the Illinois State Penitentiary in the presence of Sheldon Schapiro and Assistant Public Defender, John Doherty, and concluded that claimant does not have a scar on his neck. Butler testified that he also interviewed Abraham Barker who was on probation for robbery and that Barker refused to give a statement, but that he noted that Barker had a scar on the muscle part of his shoulder, on the left side of his neck. Butler's opinion is that claimant is innocent.

Jerome Tyler, called as a witness on his own behalf, denied any involvement in the crime for which he was indicted and convicted. He testified that he was in an automobile in front of 744 Bowen Avenue when he noticed

police squads and saw Willie Stephens, Clifton Cates and Abraham Barker running towards the car. They all went up to the party at Jessie King's apartment. On cross examination, he stated that at his trial he testified to an alibi that he was sitting in a bar at 41st and Cottage Grove Avenue, and that he was told to testify to this alibi by his attorney.

He further testified that he was Assistant Manager of an F. W. Woolworth store and that prior to his arrest, he had worked for the Moffett Portrait Studio from 1957 to 1959 at $125.00 per week; that he had attended mechanic transmission school and just prior to his arrest was working as an automatic transmission specialist earning an average of $175.00 per week, and was self employed from 1957 to 1963, earning approximately $9,000 per year. Claimant testified that he was innocent; that he had known Oliver Carter for about 15 years before November 16, 1963; and that claimant was with Howard Burks on the evening of November 16, 1963, from 6:00 p.m. until 11:00 p.m. Claimant said his attorney at the time of his trial was Woodrow Hodge. Mr. Hodge did not see the claimant for the months he was in jail prior to the trial. The only time he saw him was when Mr. Hodge told him that he should tell the story he instructed him to tell that claimant was in a bar on 41st and Cottage Grove. Claimant stated that he said exactly what his attorney instructed him to say. He was aware that he was lying. Rose Peterson and Willie Stephens testified for claimant at the trial. Claimant did not ask Willie Stephens to testify. When Stephens gave his testimony, claimant thought that Stephens had committed the crimes. Claimant objected to his attorney, but did not raise an objection with the court.

The female complainant, Eleanor Divers Mulnix, testified that she recalled testifying at claimant's trial that he

was the man who committed the robbery and rape. She was not really positive about her identification but said it so she could get out of court. She believed she was mistaken in identifying Jerome Tyler. She stated that the man who raped her had a scar on his neck.

Respondent contends that claimant has failed to sustain the burden of proving himself innocent of the facts of the crime by a preponderance of the evidence, pointing out that this is distinguished from the raising of a reasonable doubt; ***(John Hudson*** vs. ***State,*** No. **5164 (1967);** that the failure to call Howard Burks at the criminal trial negates his testimony before **the** Court of Claims and destroys his credibility *(Jonnia **Dirkans*** vs. ***State,*** No. **4904);** that the prior inconsistent statements of Eleanor Divers Mulnix have impeached her; that the fact claimant did not object to perjured statements of Willie Stephens is incredible; that claimant's actions of fabricating a false alibi, testifying under oath thereto, and allowing two other witnesses to testify falsely on his behalf were the direct cause of his imprisonment; that the State should not be held liable for the claimant's perjury and other misdeeds where it acted properly and in a legal manner since the theory underlying the State's liability for wrongful incarceration is that the State acted or did something improperly so as to prejudice the rights of the claimant resulting in his imprisonment for a crime he did not commit; and that claimant's testimony regarding damages is inconsistent and unreliable.

Claimant replies that the test under the Statute is whether claimant is innocent of the fact of the crime for which he was imprisoned and respondent has presented no evidence to refute the case established by claimant; that the evidence is clear that the person who committed the crimes for which claimant was imprisoned had a scar on his neck and that claimant has no such scar; that former Assistant

State's Attorney Sheldon Schapiro and State's Attorney Detective Frank Butler testified that when they embarked on the investigation, it was not their purpose to prove the claimant's innocence which is in no way inconsistent with their conclusion that claimant was innocent of the fact of the crime; that the weight and credibility of the testimony of witnesses Burks and Eleanor Divers Mulnix is a question for the trier of fact; and that claimant was not the master of his own defense in that he was continually incarcerated from the time of arrest until trial and had neither the training nor background to assert every right which a more sophisticated defendant might have invoked. Claimant further contends that he presented evidence of consistent employment dating back four years prior to his arrest, was a skilled specialist in automatic transmissions prior to going to prison, a skill which fell into disuse as a result of his imprisonment.

In the opinion of the Court the claimant has satisfied the sole standard set by the legislative requirements for recovery under Section 8c—proof by a preponderance of evidence that he was innocent of the crime for which he was imprisoned.

Special weight must be given to the testimony of Sheldon Schapiro, the Assistant State's Attorney who conducted the reinvestigation and Officer Frank Butler who assisted him. Both witnesses have testified that from their investigation, it is their opinion that the claimant was innocent of the charges for which he was imprisoned. The respondent has offered no testimony, nor has it argued that claimant did, in fact, commit the crime for which he was imprisoned.

Claimant is hereby awarded the sum of $6,000.

(No. 6674—Claimant awarded $213.75.)

DONOHOE ASPHALT AND PAVING COMPANY, Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed October 20, 1972.

DONOHOE ASPHALT AND PAVING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6728—Claimant awarded **$215.00.)**

TERRY HOFFMAN, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed October 20, 1972.

TERRY HOFFMAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6736—Claimant awarded $172.00.)

MICHAEL KOCHER, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed October 20, 1972.

MICHAEL KOCHER, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6809—Claimant awarded $2,100.20.)

MEMORIAL HOSPITAL OF SPRINGFIELD, ILLINOIS, An Illinois Not-For-Profit Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed October 20, 1972.

ROBERT H. STEPHENS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6820—Claimant awarded $118.08.)

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, *vs.* THE BOARD OF REGENTS OF THE REGENCY UNIVERSITIES SYSTEM, ILLINOIS STATE UNIVERSITY, Respondent.

Opinion *filed* October 20, 1972.

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, pro se.

PAUL E. MATHIAS, Legal Counsel for THE BOARD OF REGENTS OF THE REGENCY UNIVERSITIES SYSTEM, Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6835—Claimant awarded $148.21.)

CLARENCE BROWN, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF LABOR,** Respondent.

Opinion filed October **20, 1972.**

CLARENCE BROWN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6876—Claimant awarded $768.48.)

ESTATE OF HELEN L. KAISER, Deceased, Claimant, **us. STATE** OF **ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed October **20, 1972.**

REDMAN, SHEARER, O'BRIEN AND BLOOD, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PERLIN, C.J.

(No. 6877—Claimant awarded $163.80.)

VIC KOENIG **CHEVROLET,** INC., Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed October **20, 1972.**

VIC KOENIG CHEVROLET, INC., Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriution. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6284—Claimant awarded **$850.00)**

J. F. **EDWARDS** CONSTRUCTION COMPANY, An Iowa Corporation licensed to do business in the State of Illinois, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 23, 1972.

HERBERT M. SPECTOR, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*cash* allowance. Cash allowance provision in contract provides that where actual cost is less than bid price, the actual cost is the prior to be paid by respondent.

HOLDERMAN, J.

Claimant filed an action against the respondent based upon a contract entered into on June 11, 1970.

Claimant alleges that the State of Illinois entered into said contract with claimant for the installation of an underground electrical system and street lighting improvements at the Galesburg State Research Hospital, Galesburg, Illinois.

The allegations are as follows:

"**4.** That the State has paid, heretofore, the sum of $734,268.12. That said Defendant has refused to pay $3,200.00 of said contract price after a reasonable demand has been made for said amount by the Plaintiff.

"5. That said **$3,200.00** is payment for a System Diagram Board as required by paragraph **2100** of said contract. Said System Diagram Board has been installed and accepted by the State of Illinois."

It is the contention of the State that $850.00 is the balance due claimant under the contract.

Article 2160 of the contract provides that each

contractor bidding on the job should "figure in his bid the sum of Three Thousand Two Hundred Dollars **($3,200.00)** for the installation of a System Diagram Board . . . ."

Article **2160** then directs the contractor to "see Article **22** of General Conditions of the contract."

Article **22** reads as follows:

"CASH ALLOWANCES:

"The contractor shall include in the contract sum, allowances named in the Contract Documents, and shall cause the work so covered to be done by such contractors **and** for such sums as the Supervising Architect may direct, the contract sum being adjusted in conformity therewith. The contractor declares that the contract sum includes **all** expenses and profits on account of cash allowances. No demand for expenses or profit other than those included in the Contract sum shall be allowed. The contractor shall not be required to employ, for any such work, a subcontractor against whom he has a reasonable objection."

A re-statement of Article **2160** and Article **22** would be as follows:

a) Each contractor bidding on the Galesburg Hospital Contract shall arbitrarily figure in his bid the sum of **$3,200.00** for the purchase price of a "System Diagram Board."

b) In the course of performing the contract, the contractor shall purchase the System Diagram Board from such subcontractor or supplier and at such price **as** directed by the Supervising Architect, and cause the same to be installed.

c) The total contract bid sum shall be adjusted (up or down) according to the actual amount of money spent by the contractor in the purchase of the System Diagram Board.

d) If the purchase price of the board which the Supervising Architect shall direct the contractor to buy is less than **$3,200.00,** the contractor shall not be required to adjust the portion of the total contract bid sum which represents his profit percentage based on the bid figure of

$3,200.00; but if the purchase price of the board is more than **$3,200.00,** the contractor shall not be permitted to ask for an additional profit percentage based on a purchase price in excess of **$3,200.00.**

e) The contractor shall present no separate or additional demands for any other expenses incurred in the purchase or installation of the System Diagram Board, but shall have figured the same in his total contract bid sum.

Mr. William Volk, an employee of the State of Illinois and the Supervising Architect, stated that the purpose of Article **22** dealing with Cash Allowances is a standard provision in the General Conditions section of the contract, the purpose of which is to put **all** bidders on an equal footing in bidding on particular items with reference to which, for various reasons, would be difficult.

The facts which are undisputed show that the claimant purchased the Systems Diagram Board for the sum of $850.00 and that it was installed by the maintenance personnel of Galesburg State Hospital without any charge to claimant.

Claimant bases its contention that it is entitled to the sum of $3,200.00 on the grounds that Mr. Volk, the Supervising Architect, did not personally give any direction to the Edwards Construction Company as to who should manufacture the board or the price to be paid and that in the absence of such personal directions from the Supervising Architect, the bid figure of **$3,200.00** should control.

The record shows that no directive on the subject of the board's manufacturing cost came from the supervising architect's office or its employees bid figure of **$3,200.00** should control.

The record shows that no directive on the subject of the boards manufacturing cost came from the supervising

architect's office or its employees but did come from Mr. Sam Sibley, an employee of the State, who was the electrical engineer on the job. The record does not disclose the source of Mr. Sibley's authority to issue the directives called for by Article 22 but such directives were acknowledged. Mr. Edwards and he acted upon the same.

It is the opinion of this Court that the sum of $850.00 is the amount due and owing to the claimant and an award of said amount is hereby entered.

(No. 6384—Motion for Summary Judgment allowed.)

NUMBER TWO CHICAGO DWELLINGS ASSOCIATION, An Illinois Not-For-Profit Corporation, Claimant, *vs.*, STATE OF ILLINOIS, Respondent.

Opinion filed October 23, 1972.

NUMBER TWO CHICAGO DWELLINGS ASSOCIATION, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

LIMITATIONS—*negligence*. Where action was filed 137 days after two year statute of limitations had run, respondent's motion for summary judgment would be allowed.

HOLDERMAN, J.

Claimant seeks the sum of $3,500.00 for uncollected rent as a result of the Cook County Department of Public Aid's alleged negligence in not implementing a rent withholding order issued by the Department on November 12, 1968, to July 1, 1969, for the recipients of Public Aid who resided at 515-17 West 65th Place, Chicago, Illinois.

The Complaint was filed on November 15, 1971.

Respondent made a Motion For Summary Judgment and as grounds for such Motion calls attention to the fact that this action was filed 137 days after the two year statute of limitations had run.

Respondent supported its Motion by citing the case of ***Landsman and Zaransky*** vs. ***State of Illinois,*** C.C.R. No. ***6025,*** which was decided April **18, 1972.**

In the above cited case, the Court of Claims dismissed the claim for unpaid rent for the reason that the action was filed **22** months after the rent withholding period. This case thus holds that the statute of limitations for rent withholding cases is measured from the last date of the withholding period.

Here the claimant has failed to file this claim within two years following the end of the rent withholding period.

Respondent further argued that claimant is guilty of contributory negligence for failure to take action when it was acquainted with the fact that the rent was not being withheld and called attention to the fact that a letter was written on August **2, 1972,** which advised the claimant that the rent was not being withheld.

It is the finding of this Court that the claim not being filed within the period provided for by statute, the respondent's Motion For Summary Judgment is in order.

Motion For Summary Judgment is hereby granted.

(No. **5760—Claimant awarded $6,913.01.)**

TEXACO, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 3, 1972.

TEXACO, **INC.,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

DAMAGES—*stipulation.* **Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.**

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto and the Court being fully advised in the premises;

THIS COURT FINDS that this claim is for gasoline and petroleum products and services for State-owned yehicles for various departments as follows:

Liquor Control Commission	NIL
Department of Law Enforcement	$4,565.49
Department of Conservation	154.93
Department of Public Health	22.00
Department of Agriculture	154.38
Department of Revenue	39.24
Department of Public Works & Buildings (Now Transportation)	1,712.23
Department of Mental Health	7.79
Department of Children & Family Services	26.36
Department of Corrections	14.59
Legislative Investigating Commission	8.83
Illinois Veterans' Commission	7.74
Illinois State Scholarship Commission	12.63
Secretary of State	176.98
Attorney General	9.82

for a total sum of $6,913.01 in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 6232—Claimant awarded $2,574.75.)

CARMEN ALONZO, d/b/a CARMEN'S MOVERS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed November 3, 1972.

EDWIN N. RAFFEL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6370—Claimant awarded $90.73.)

MRS. DONALD BARNETT, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November 3, *1972.*

MRS. DONALD BARNETT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6385—Claimants awarded $500.00.)

NICHOLAS G. PARISE AND PATRICK MCCLATCHEY, Claimants, us. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed November 3, 1972.

LEROY A. GARR, Attorney for Claimants.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6462—Claimant awarded $6,129.66.)

GORDON ELECTRICAL CONSTRUCTION COMPANY, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENTS OF GENERAL SERVICES AND MENTAL HEALTH, Respondent.

Opinion filed November 3, 1972.

GORDON ELECTRICAL CONSTRUCTION COMPANY, INC., Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6501—Claimant awarded $5,609.56.)

S. **MELTZER AND SONS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES AND MENTAL HEALTH, Respondent.**

Opinion filed *November* 3, *1972.*

S. MELTZER AND SONS, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6700—Claimant awarded $43.00.)

CURTIS ANDERSON, Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed November 3, 1972.

CURTIS ANDERSON, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6737—Claimant awarded $85.00.)

ALTON AMERICAN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed November 3, 1972.

ALTON AMERICAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6772—Claimant awarded $95.00.)

MILDRED R. JACKSON, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November 3, 1972.

DR. MILDRED R. JACKSON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6790—Claimant awarded $201.02.)

VITO'S MARKET, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed November 3, 1972.

VITO'S MARKET, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6797—Claimant awarded $117.72.)

ROOT BROTHERS MANUFACTURING AND SUPPLY COMPANY, An Illinois Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed November 3, 1972.

KORSHAK, ROTHMAN, OPPENHEIM AND FINNEGAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6845—Claimant awarded $242.04.)

FIRESTONE STORES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed November 3, 1972.

FIRESTONE STORES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5625—Claim denied.)

JAMES RICHARD DUNCAN, Claimant, *vs.* STATE OF **ILLINOIS,** Respondent.

Opinion filed April 12,1972.
Petition of Claimant for Rehearing denied November 9, 1972.

MCBRIDE, **BAKER,** WIENKE **AND SCHLOSSER,** Attorney for Claimant.

WILLIAM J. **Scorn,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*wrongful incarceration.* **Before an award will be made for wrongful incarceration, claimant must prove by a preponderance of the evidence (1) that the time served in prison was unjust; (2) that the act for which he was wrongfully imprisoned was not committed; and (3) the amount of damages to which he is entitled.**

HOLDERMAN, J.

Claimant, James Richard Duncan, seeks to recover from the State of Illinois, compensation for time served by Duncan in a prison in the State of Illinois, at which time he alleged he was innocent.

This action **is** brought under the provisions of Ch. **37,** Sec. 439.8(c), Ill.Rev.Stat., 1967.

The Statute allows recovery to anyone who is unjustly imprisoned in the State of Illinois providing he is innocent of the crime for which he was incarcerated. The Statute provides for various amounts of recovery depending upon the amount of time served.

At approximately 10:10 p.m. on the evening of October **4,** 1959, Samuel Schwartz, a fifteen year old boy, was stabbed and killed on the elevated platform of the Chicago Transit Authority at 22nd and State Streets in Chicago, Illinois. There were no witnesses to this crime.

The State, in its prosecution, called Carl Remmer and Louis Mayberry, and both testified that they saw the accused at 2222 South State Street on the night in question

and related that he had told them he had just killed a "stud on the elevated platform a few minutes before. These witnesses also testified that the defendant showed them the knife he had used.

A written confession given to the police on November 12, 1959, was also admitted into evidence. Defendant claims that the confession given to the police was the result of coercion and he further states that he did not give any oral confession to the witnesses above named.

Defendant claims that he was at a dance from 8:30 p.m. until midnight the night of the murder, which facts were corroborated by six other youths. This testimony is directly contradicted by four teen-age girls who testified that the defendant was at the elevated station shortly before the murder, although there was some difficulty by two of the girls in fixing the exact time that they had seen the defendant.

Defendant further testifies to cruelty and other acts of coercion by the Police Department in obtaining the confession.

Among the acts of coercion testified to by the defendant was that he had been placed in the "hole" for some 18 days prior to the alleged confession.

The record discloses that there is also another confession to this same murder by an individual by the name of Charles Baisten.

Defendant was tried and convicted of murder and his punishment was fixed for a term of 30 years, which finding was on the 26th day of January, 1960.

A Writ of Error of defendant's conviction was taken to the Illinois Supreme Court and in May, 1968, the Court reversed this conviction and the cause was remanded to the Circuit Court of Cook County for a new trial. The new trial

was granted and, on or about December 20,1968, a jury in the Circuit Court of Cook County returned a verdict that defendant was not guilty of the murder of Samuel Schwartz and defendant was released from prison in the State of Illinois on that date.

He actually served from November 12, 1959, to December 20, 1968—a period of nine years.

The Supreme Court, in its decision, reversed the original conviction on the theory that the confession of Duncan was obtained by coercion.

It did not, however, pass upon the guilt or innocence of the accused and, as a matter of fact, this issue was completely ignored.

We, therefore, have before us the following situation: **A** fifteen year old boy murdered in a robbery attempt, the confession, upon which the original conviction was based, a finding of guilty, a serving of time by the defendant, a reversal of the original conviction by the Supreme Court on the theory that the rights of the accused were violated, and the second trial in which the original confession was apparently not available for the prosecution and a finding of "not guilty."

The Statute, under which this claim is pursued, is clear in that the claimant must prove his innocence in order to be entitled to an award by the Court of Claims.

The burden is upon the claimant to prove by a preponderance of the evidence **(1)**that the time served in prison was unjust, **(2)** that the act for which he was wrongfully imprisoned was not committed by him, and **(3)** the amount of damages to which he is entitled. ***Joannia Derkins*** vs. ***State*** *of Illinois,* No. 4904; ***Tate*** vs. ***State*** *of Illinois*, ***25*** C.C.R. Page ***245.*** Cases therein cited.

We find that the claimant, James Richard Duncan, has

failed to prove his innocence of the crime for which he was originally imprisoned.

It is the opinion of this Court that the legislature of the State of Illinois and the language of Ch. 37, Sec. 439.8(c), Ill.Rev.Stat., 1967, intended that a claimant must prove his innocence of the "fact" of the crime. We do not believe it was the intention of the General Assembly to open the treasury of the State of Illinois to former inmates of its prisons by the establishment of their technical or legal innocence of the crimes for which they were imprisoned.

Claim denied.

(No. 6.517—Claimant awarded $740.00.)

BELDEN MANOR SHELTER HOME, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November 13, 1972.

CENCO CARE CORPORATION, for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* **When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.**

PER CURIAM.

(No. 6543-Claimant awarded $39.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, **os. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November 13, 1972.

A-1 **AMBULANCE SERVICE, INC.,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6696—Claimant awarded $1,425.00.)

B. T. KAVANAGH, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed November *13, 1972.*

B. T. KAVANAGH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6698—Claimant awarded $344.00.)

SONNY WILLIAMS, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed November *13, 1972.*

SONNY WILLIAMS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6699—Claimant awarded $385.50.)

LARRY VON NIDA, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed November *13, 1972.*

LARRY VON NIDA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6763—Claimant awarded $39.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November 13, *1972.*

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6764—Claimant awarded $39.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November 13, *1972.*

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6800—Claimant awarded $853.86.)

DAVID L. SUPRENANT, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November 13, 1972.

DAVID L. SUPRENANT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6855-Claimant awarded $61.00.)

JAMES MAZZOLINI, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed November 13, 1972.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6896—Claimant awarded $131.90.)

PARKE, DAVIS AND COMPANY, A Michigan Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed November 13, 1972.

PARKE, DAVIS AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. **When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.**

PER CURIAM.

(No. **5152—Motion of Respondent to dismiss allowed.)**

JAKE VAN YZENDOORN, Guardian of the Estate of MICHAEL VAN YZENDOORN, A Minor; JAKE VAN YZENDOORN, Guardian of the Estate of SHIRLEY VAN YZENDOORN, A Minor; and JAKE VAN YZENDOORN, Administrator of the Estate of SARAH VAN YZENDOORN, Deceased, Claimants, ***vs.*** STATE OF ILLINOIS, Respondent.

Opinion filed November 14, 1972.

COONEY AND STENN, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, and MARTIN SOLL, Assistant Attorneys General, for Respondent.

HIGHWAYS—*traffic signs*. **Where accident caused solely by negligence of driver of car, no recovery would be allowed.**

HOLDERMAN, J.

Jake Van Yzendoorn, as Guardian of the estate of Michael Van Yzendoorn, a minor, as Guardian of the estate of Shirley Van Yzendoorn, a minor, and as Administrator of the estate of Sarah Van Yzendoorn, deceased, filed suit against the State of Illinois asking for an award of Twenty-five Thousand ($25,000.00) Dollars for each of the two minors and an additional Twenty-five Thousand ($25,000.00) Dollars to be paid to him as Administrator of the estate of Sarah Van Yzendoorn, deceased.

The two minors, with their mother, were passengers in a car on the 8th day of March, 1963, which was being driven by one Rheta Hobbs in an easterly direction along and upon Jonathan Creek Road, at or near its intersection with Illinois Route 133, approximately three miles west of Arthur, Illinois, in Moultrie County.

This car, at said intersection, collided with a car driven by one Duane W. Eveland and then collided with another motor vehicle being operated by one Lester Schrook.

As a result of the collisions, Michael Van Yzendoorn, Shirley Van Yzendoorn, and Sarah Van Yzendoorn were seriously injured. Sarah Van Yzendoorn died as a result of said injuries on the 8th day of March, **1963.**

The State is charged with negligence in that it did not have adequate and proper traffic control signs at said intersection.

This case has already been passed upon by this Court as the Administrator of the estate of Duane W. Eveland filed suit asking for a recovery of **$25,000.00,** and alleged in his complaint that the deceased met his death of March 8, **1963,** as a result of the same accident in question.

The State has filed a motion to dismiss citing the Eveland case and its findings.

In view of the fact that the entire question of alleged negligence of the State and all the facts concerning the accident were so clearly and concisely set forth in the Opinion of Judge Perlin, **25** C.C.R., Page **256** (1965), it would be repetitious to go over the same facts again.

The above mentioned decision of this Court held that the accident in question was caused solely by the negligence of the driver of the car in which the Van Yzendoorns were occupants and that it was her negligence, and her negligence alone, which caused the accident, injuries and death complained of.

Wherefore, this Court grants the motion to dismiss the instant cause.

(No. 5391—Claim denied.)

COUNTRY MUTUAL INSURANCE COMPANY and WALTER RICHARDS and SCOTT RICHARDS, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion *filed* November *14, 1972.*

GILLESPIE, BURKE AND GILLESPIE, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*domestic animals.* **Where steer belonging to respondence escaped from fenced field, causing collision, court held claimant failed to show respondent failed to use due care.**

HOLDERMAN, J.

Claimant, Country Mutual Insurance Company along with Walter Richards and Scott Richards, seek to recover from the State of Illinois the sum of **$704.79.**

Scott A. Richards sustained damages to his automobile in the above amount and under a policy of insurance issued on August **29, 1966,** to said Scott A. Richards, Country Mutual Insurance Company became obligated and paid the sum of **$639.74.**

The basis on which the claimant seeks to recover the amount claimed is as follows:

On or about August **29,1966,** at or near Alternate U. S. Route **30** located one-half mile west of Peck Road in Kane County, Illinois, claimant Walter Richards' car was being operated by Scott Richards.

The Illinois State Training School for Boys, operated by the State of Illinois, adjoined the highway on which the accident occurred.

The accident in question was caused by a collision between the car being driven by Scott A. Richards and a steer alleged to belong to the St. Charles Boy's School farm.

The record discloses the following facts: It was a foggy night. The car involved in the accident was being driven at approximately **55** miles per hour and the windshield wipers were not in use. The car struck an Angus steer which was upon the road and the time of the accident was about 1:00 a.m. Three other cars subsequently struck the same animal.

Ch. **8,** Sec. 1, Ill. Rev. Stat., sets forth the statutory law relative to domestic animals running at large. The important part of this section is as follows:

"Provided, that no owner or keeper of such animals shall be liable for damages in any civil suit for injury to **the person or property** of **another caused by the running at large thereof, without the knowledge** of **such owner** or **keeper, when such owner** or **keeper can establish that he used reasonable care in restraining such animals from *so* running at large."**

The statute is explicit in stating that the owner or keeper is obliged to establish that he used reasonable care in restricting such animals from running at large and it does not require that respondent establish anything beyond that, and specifically it does not require that respondent establish that it did not know the animal was at large.

It follows from a reading of the statute that claimants in cases such as this must prove:

1. That negligence by the claimant did not contribute to the accident;

2. That the owner of the animal had knowledge of the running at large of said animal; and,

3. That he had not used reasonable care in keeping said animal from running at large.

Respondent as a matter of defense must prove that he used reasonable care in keeping said animal from running at large.

The record further discloses the fact that at the time of the accident or shortly thereafter, there were three men in the adjoining field with flashlights who were counting the

cattle to see if the steer in question was one of theirs.

The question of the condition of the fence becomes of primary importance as to whether or not the respondent did use reasonable care in preventing animals from running at large upon the highway and as to the condition of this particular fence, the evidence is somewhat meager.

It was described as "sagging" and also "not the best fence in the world" and "I believe an animal could squeeze through." These three above statements are all the evidence there was regarding the condition of the fence except some photos that were introduced in which it was practically impossible to determine the condition of the fence.

The State did not introduce any evidence of any kind or character in defense.

1. It argued the point that the claimant was not free from contributory negligence;

2. That the claimant had failed to prove that the respondent had knowledge of the steer being upon the road; and,

3. That the claimant had failed to prove that the respondent had not used reasonable care in keeping the animal confined.

There was no evidence to show that the respondent had knowledge of the animal being at large.

Claimant cited the cases of ***Fugate*** vs. ***Murray,*** **311** Ill. App. **323** and ***Guay*** vs. *Neel*, 350 Ill. App. **111.** In effect, these cases state very clearly that the owner of cattle would be liable if his negligence allowed the cattle to get upon the public highway and a motorist was injured. Section **1** of Chapter **8** was amended in **1931.** Previous to this time, claimant only had to allege and prove that the cattle were at large and that the plaintiff was damaged as a result thereof. This was aimed at the situations where animals were

allowed to run at large upon the highways and roads of the State of Illinois.

It is respondent's contention that the legislature, by the amendment in 1931, places a burden upon the claimant to show by a preponderance of the evidence that the respondent knew the animal was at large. This claimant failed to do.

Respondent further asserts that until the claimant alleges and proves up a proper case that respondent knew the animal was at large, it is not incumbent upon respondent to embark upon the task of presenting an affirmative defense.

It appears upon a reading of the record in its entirety, that the claimant has failed to establish his case. This being the case, the question of whether or not Scott A. Richards was negligent is immaterial.

Claimant, having failed to show that the fences were not in a reasonable state of repair and that the respondent had not used reasonable care in preventing cattle from running at large, and it not being shown that respondent knew that said cattle were at large, have failed to make the proof required.

Claim denied.

(No. 5670—Claimant awarded $25,000.00.)

JOSEPH FRANCIS BUSKING, a minor, by IRENE BUSKING, his mother and next friend, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 14, 1972.

REED AND LUCAS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; BRUCE FINNE and JAMES RUBIN, Assistant Attorneys General, for Respondent.

PRISONERS AND INMATES—*negligence.* In order for claimant in a tort action to recover damages against State he must prove that State was negligent, that such

negligence was the proximate cause of the injury, and that claimant was in the exercise of due care and caution for his own safety.

BURKS, J.

Claimant in this action seeks damages for the loss of vision in his right eye, allegedly caused by the negligent act of an employee of the respondent.

The evidence introduced at the hearings reveals that on March **5, 1965,** while claimant was confined to the Pere Marquette State Boys' Camp, claimant's eye was struck by a glass shard from a broken door panel. The glass panel shattered when an employee of the State of Illinois struck it with his hand or fist while waving claimant away **from** the door. Claimant was then 15 years of age. **As** a result of said injury, claimant has suffered severe and permanent injuries, including total irreversible blindness of his right eye.

The facts in this matter are relatively simple and largely uncontroverted. The respondent presented no witnesses.

The claimant, as punishment for certain misdeeds at the camp (smoking), was not permitted on the day of the accident to enter a television room off a main recreational building at the Camp. **A** certain door, with a diamond-shaped glass panel, led from the main part of the building to the television room. The claimant, with another companion (James J. Halpin), attempted to watch television through the glass panel. They were waved away by a State of Illinois employee, one Stanley Miller, whose principal duty was the supervision and control of inmates at the Boys' Camp. Claimant and Mr. Halpin both testified that Miller first waved them away by knocking his fingers against the glass panel. Later, both boys returned to the door and resumed their attempt to watch a television program through the door and resumed their attempt to watch a television program through the door's glass panel.

Miller again waved them away and the claimant withdrew his face from the window. He then immediately put his face back close to the window again. Whereupon Miller rapped on the window again, this time with his fist. The window broke and a glass shard struck the claimant's right eye.

The claimant's face began to bleed and he was taken to the washroom by a Mr. King, another employee at the institution. There the area of the right eye was cleansed. The claimant explained that at this time the vision in his right eye was limited to "bubbly like", "like looking through a microscope". He was then taken to the Jerseyville Community Hospital which was the nearest medical facility available. He received only emergency treatment there. From the Jerseyville Community Hospital the claimant was taken to St. Joseph's Hospital in Alton, Illinois. He was examined by a Dr. Kinney, an eye specialist. He was admitted to this hospital as an inpatient, and the following morning (March 6, 1965) surgery under general anesthesia was performed on the right eye. He remained a patient in St. Joseph's Hospital for about five days. Dr. Kinney made daily examinations and medication was applied directly to the eye.

Upon discharge from St. Joseph's Hospital, the claimant returned to Pere Marquette. Following his discharge he saw Dr. Kinney on a weekly basis for four or five weeks. He left Pere Marquette in May of 1965 and returned home to Chicago. In Chicago he was sent to Illinois Research and Educational Hospital where he was treated by Michael Lipsich, M.D..

After many outpatient treatments and consultations at Illinois Research, the claimant was admitted as an inpatient on October 12, 1966. On that date he underwent a combination keratoplasty, iridotomy and sphincterotomy

operation under general anesthesia. The operations were performed by Michael Lipsich, M.D., with **H.** Schatz, M.D., assisting. The post-operative period was complicated by a severe anterior chamber hemorrhage which took ten days to clear. He was discharged on October **26,1966,** and ordered to apply Atropine and Hydrocortisone medication each twice daily. He was to wear a shield over his right eye at all times and engage only in moderate activities. At the time of discharge his vision was limited to light perception and projection. On November **16, 1966, as** an outpatient, the claimant's eye was cauterized to stop a hemorrhage condition that had developed.

On July **20, 1970,** the claimant was examined by William Rosenberg, M.D., a physician specializing in the practice of Opthalmology. This examination was conducted at the request of the respondent, pursuant to its letter of June **26, 1970.** Dr. Rosenberg's report substantiates the fact of the claimant's corneal laceration and the surgical procedures which followed. He reports that the claimant has only finger-counting ability in the right eye at a distance of one foot and that the prognosis for improved vision is poor. When the claimant was examined in October of **1970** by his former opthalmologist, Dr. Michael **P.** Lipsich, the report generally corroborates the respondent's examining physician's findings.

The medical evidence supports a finding that claimant has suffered severe, painful and permanent injuries to his right eye amounting to almost total blindness in that eye.

We turn now to the question of the proximate cause of claimant's injury. Claimant contends that respondent, through its agent and servant, Stanley Miller, was negligent in knocking at a glass window when he knew the claimant's face was directly on the other side.

Claimant does not allege that Mr. Miller intended to

break the glass nor that he knew the glass would break from the force of his blow. Claimant charges that Miller should have foreseen or anticipated the probable consequences of his negligent act. Both parties agree that foreseeability is one of the tests of proximate cause. We believe that the rule applicable in this case is stated in Z.L.P. Negligence §*105* as follows:

"The injury or damage must be of such a character that a man of ordinary prudence, sagacity, and experience ought to have foreseen it might probably occur as a result of the negligent act. If the injury or damage is one which could not have been foreseen as a probable result, the act complained of is either a remote cause of the injury or damage or not cause at all.

"On the other hand, where it could have been reasonably foreseen that some injury might result from the negligent act complained of, it is not essential that the precise consequences which actually resulted therefrom should have been foreseen. So it is not necessary that the exact particulars of the accident which actually occurred, or that the precise injury or damage which resulted, should have been foreseen."

Applying the above rule to the facts in this case, we believe that respondent's employee, Stanley Miller, was negligent and that his negligence was the proximate cause of claimant's injury. Mr. Stanley Miller selected an improper and unnecessary method of warning the claimant to stop watching TV through the glass window of the door. It was improper because a reasonable person knows, or should know, that window glass can break and will break if enough pressure is applied. Window glass does not always break with a knock, but when you can see a person's face directly opposite you on the other side, it is negligence to strike the glass. It was unnecessary negligence because the door could easily be opened and there was no reason to communicate with a boy through a closed door by striking the glass with his fist. On prior occasions Mr. Miller opened this very door when he wanted to talk to someone on the other side.

Respondent concedes that claimant's injury was

proximately caused by the blow struck by respondent's employee. The State does not argue that a shattering of glass by a blow of this nature is unforeseeable as a matter of law. It merely contends that the consequences were not "within anyone's normal expectations". This contention does satisfy the rule, stated above, which is based upon foreseeability and not expectations.

The final issue raised by the respondent is whether the claimant was free from contributory negligence. Arguing that "foreseeability is a two-way street", respondent contends that claimant should have anticipated Miller striking the glass with his fist; that the glass might shatter; and that the claimant thus knowingly exposed himself to the danger of foreseeable injury *(citing Z.L.P. Negligence* §125). We could not impute such exceptional foresight to an adult person under the facts presented in this case, and much less to a boy of 15. There was nothing in Mr. Miller's previous conduct to suggest that he would react at this time as violently as he did. While claimant was acting improperly in putting his face near the glass panel in order to watch television, after being warned not to do so, the injuries which he suffered did not come within the particular risk created by his own conduct.

In arriving at the amount of claimant's damages, we have taken into account the extreme pain and suffering which claimant endured over a long period of time; the loss of earning capacity due to his disability and permanency of his injury. The spector of living out his life essentially blind in the right eye is the cold reality this claimant faces and has faced since 1965 when he was 15 years of age. We believe that the nature and extent of the claimant's injuries fully supports an award of the maximum amount that was recoverable in an action against the respondent on the date of the accident.

The claimant, Joseph Francis Busking, is hereby awarded damages in the sum of $25,000.

(No. 5785—Claimant awarded $10,000.00.)

HOWARD C. MEDLEY, d/b/a **MEDLEY MOVERS AND VAN LINES,** Claimant, ***vs.*** **STATE** OF **ILLINOIS, DEPARTMENT OF PUBLIC AID,** Respondent.

***Opinion filed November 14,* 1972.**

EDWARD A. WILLIAMS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5932–Motion for summary judgment granted.)

KENTON L. POWERS, Guardian of the Estate of **LARRY ALLEN POWERS,** a Minor, and **KENTON L. POWERS,** Individually, Claimants, ***vs.*** **STATE** OF **ILLINOIS,** Respondent.

***Opinion filed Nouember 14,* 1972.**

MAYNARD AND BRASSFIELD, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respondent.

DAMAGE—hitation in recovery. Where claimant brought action against respondent as joint tort-feasor, and where a covenant not to sue was entered with other joint tort-feasor which exceeds the statutory limit of damages allowable in Court of Claims, respondent's motion for summary judgment would be allowed.

HOLDERMAN, J.

Claimant, Larry Allen Powers, a minor, by Mary Ann Powers, his mother and next friend, and Kenton L. Powers, Individually, and as guardian of the estate of Larry Allen Powers, a minor brought suit against the State of Illinois for

injuries arising out of an accident on the 20th day of February, **1969.**

The claimant, a minor, was a passenger in a car driven by one Larry **S.** Telander.

The car in which the claimant was riding was being operated in a westerly direction on a road called Blackhawk Road in the County of Winnebago and State of Illinois.

This car was involved in an accident with another car driven by one Carol Hollenbaugh.

Claimant's contention is that the road was slippery and icy and was exceedingly dangerous to drive on.

Claimant received very severe injuries and as a result of said injuries has become a quadriplegic.

A great deal of money has been spent upon him for medical care, hospitalization, etc. and said claimant is still under medical care and spending rather large sums for his continued care and treatment.

Claimant filed suit in the Circuit Court of Winnebago County against Larry **S.** Telander and Carol Hollenbaugh. A settlement was made in the amount of $46,500.00 and a covenant not to sue was issued by Kenton L. Powers, individually, and as guardian of the estate of Larry Allen Powers, a minor, and a stipulation was entered into.

The State of Illinois has made a motion for summary judgment against the claimant. The basis for this motion is that they advanced the theory that the claimant, in a case such as this, is entitled to one satisfaction and the Court must deduct from the statutory limit the amount received under the covenant not to sue. In this case, the maximum amount recoverable is the sum of $25,000.00, and as the recovery already made greatly exceeds said $25,000.00, the

State's theory is that the claimant is not entitled to any further recovery.

In support of the State's motion, they cite the case of ***The Estate of Sam Anzalone*** vs. ***State of Illinois, 24*** C.C.R. **172 (1961).** In that case, the claimant received $20,000.00 from a joint tortfeasor and the statutory limit in the Court of Claims is $7,500.00. The Court, therefore, denied recovery to the claimant.

The State **also** cited the case of ***Williams*** vs. ***State of Illinois, 25*** C.C.R. **249 (1965).** In that case, the Court held that the claimant was entitled to only one satisfaction and any amount received in exchange for a covenant not to sue must be deducted from the specified statutory limit.

Claimant contends that any set-off should be against total damages and not the statutory limit and that there is a difference between total damages and the statutory limitation. He further argues in the present case that the amount set forth in the covenant not to sue is not the total damages that could be recoverable for the injuries sustained by the claimant, who was badly injured.

It is our opinion that the statutory limits as fixed by the legislature in the amount of $25,000.00 determines the amount that can be allowed in cases such as the one at bar and, therefore, the motion for summary judgment is granted.

(No. 6346—Claimant awarded $12,656.49.)

WEBER, GRIFFITH AND MELLICAN, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENTS OF MENTAL HEALTH AND GENERAL SERVICES, Respondent.

***Opinion filed November 14,* 1972.**

WEBER, GRIFFITH AND **MELLICAN, INC.,** Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E.

WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6410—Claimant awarded $250.00.)

KENNETH H. MOORE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS, Respondent.

Opinion ***filed November 14, 1972.***

KENNETH H. **MOORE,** Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 64%—Claimant awarded $320.00.)

SILVER R. SHEARER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed ***Nouember 14, 1972.***

SILVER R. SHEARER, Claimant, pro **se.**

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6595—Claimant awarded $662.90.)

ST. THERESE HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November 14, 1972.

ST. THERESE HOSPITAL, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6604—Claimant awarded $1,952.30.)

XEROX CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed November 14, 1972.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6690—Claimant awarded $4,501.30.)

EDWARD L. MANSFIELD, d/b/a MANSFIELD ELECTRIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, ILLINOIS STATE FAIR AGENCY, Respondent.

Opinion filed November *14,* 1972.

EDWARD L. MANSFIELD, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6770—Claimant awarded $69.30.)

THE FIELD AND SHORB COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed November *14, 1972.*

THE FIELD AND SHORB COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6844—Claimant awarded $572.73.)

JUDITH K. HAMILTON, Administrator of the Estate of ROBERT M. HAMILTON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed November *14,* 1972.

TAYLOR, TAYLOR AND SIKES, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6865–Claimant awarded $14.50.)

MARY ANN RUSSELL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed November *14, 1972.*

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6883–Claimant awarded $470.00.)

A. B. DICK COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed November *14, 1972.*

A. B. DICK COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6887—Claimant awarded $81.20.)

SARAH DONELSON, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed November *14, 1972.*

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6942—Claimant awarded $705.40.)

KEENAN PRINTING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed November 14, 1972.

KEENAN PRINTING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6362—Claimant awarded $6,738.50.)

ROZELLE JEFFERY SPENCER, d/b/a AARON BROS. MOVING SYSTEM, A sole proprietorship, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed November 21, 1972..

REES AND SULLIVAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 0488—Claimant awarded $645.90.)

FRANK M. SUMMERS, Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed November 21, 1972.

FRANK M. SUMMERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6565—Claimant awarded $177.00.)

BELDEN MANOR SHELTER HOME, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November 21, 1972,

CENCO CARE CORPORATION, for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—***lapsed appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6572–Claimant awarded $669.71.)

BLACK AND COMPANY, Claimant, ***vs.*** **STATE OF ILLINOIS, VARIOUS AGENCIES,** Respondent.

Opinion filed November 21, 1972.

BLACK AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6646—Claimant awarded $630.00.)

RICHARD C. POWERS, M.D., Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November 21, 1972.

DR. RICHARD C. POWERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6816—Claimant awarded $8.00.)

MASON-BARRON LABORATORIES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November **21, 1972.**

MASON-BARRON LABORATORIES, INC., **Claimant, pro se.**

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, **Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6839—Claimant awarded $273.68.)

THOMAS P. WHITE, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed November **21, 1972.**

THOMAS P. WHITE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, **Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6848—Claimant awarded $150.00.)

STANDARD STATIONERY SUPPLY COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November *21, 1972.*

STANDARD STATIONERY SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

Comas — -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6851—Claimant awarded $181.54.)

Jo **ANN** K. **MEADE,** Claimant, *vs.* **STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November *21, 1972.*

Jo **ANN K. MEADE,** Claimant, **pro** se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

Comas — lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6852—Claimant awarded $307.50.)

MARGUERITE NICHOLSON, **Claimant,** *vs.* **STATE OF ILLINOIS, DEPARTMENT OF LABOR,** Respondent.

Opinion ***filed*** November *21, 1972.*

MARGUERITE NICHOLSON, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6856—Claimant awarded $338.00.)

ELOISE LOWE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed November **21, 1972.**

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6866—Claimant awarded **$51.23.)**

SMITH **OIL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.**

Opinion filed November **21, 1972.**

SMITH OIL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6870—Claimant awarded $30.17.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed November **21, 1972.**

D. K. MCINTOSH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* **When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.**

PER CURIAM.

(No. 5746—Claim denied.)

CHARLES LONG, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 12, 1971.
Petition of Claimant for Rehearing denied November 27, 1972.

NETTLES AND MAHONEY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—*duty of care.* **Claimant is required to exercise a degree of care commensurate with the circumstances.**

HOLDERMAN, J.

The claimant, Charles Long, an adult, was injured at the Palisades State Park near Savanna, Illinois, on April 17, 1969, at 4:40 p.m.

Claimant had gone to the park to visit a particular flowing spring as he was in the habit of securing water for his plants and garden and for drinking purposes. The City of Savanna water supply was chlorinated and the claimant preferred to use the spring water for domestic purposes and for the purposes above stated.

This was an established practice of the claimant as he had made at least twenty-five visits to this particular fountain and was familiar with the spring and its setting.

This fountain was in a masonry enclosure and the area around the fountain was paved with large stones.

Claimant testified that this area was wet, mossy and slippery with some leaves and other debris around the fountain area.

There is, according to the photographs in evidence, a metal grill which is directly under the flowing pipe which drains the water away.

On the day in question, the claimant, who was a laborer, was wearing his clothes that he wore to work, **also** his usual work shoes and, while attempting to get some water, he slipped and fell and injured his right arm, which required some medical care and attention.

It is the contention of the claimant that the Palisades State Park was owned and under direct control of the respondent and that the public was invited to use its facilities and was responsible for its care and maintenance.

Claimant further contends that the Palisades State Park was negligent in not eliminating the moss and leaves around the fountain, which he contends made the area slick.

Claimant also testified that it did not rain the day of the accident nor had it rained the day before though this is in direct contradiction to one of the Ranger's Reports which indicated that it had not only rained the day of the accident but also had rained the day before.

It is also contended that respondent was fully aware of the conditions, the wetness, moss and slipperiness and had actual or constructive notice that these conditions existed at the time of the accident.

Claimant also contends that there was not any contributory negligence on his part but, on the contrary, by wearing work shoes that this did give him better footing than usual.

The issue of this case is simply to determine whether or not the State was negligent in its care and operation of the park and particularly the fountain area and did the injury complained of result from that fact and was the claimant free from contributory negligence.

It is clear that this visit was but one of many made by claimant, not for the purpose of visiting the park in the ordinary manner of a tourist or for recreational purposes, but for the sole purpose of procuring natural spring water for domestic and garden use.

Secondly, the claimant, due to his many visits, was familiar with the fountain area in every detail and was accustomed to seeing leaves, moss and water around this particular area.

It is also clear that it had rained on the day in question, and also the day before, and as to whether the wetness on the rocks near the fountain was occasioned by the rain or by the fountain is not clear. Undoubtedly, the rain would be a contributing factor and as to whether or not this area is wet without the rain, or whether the steel grill directly under the fountain provides ample drainage, is not determinable from the records.

We have, therefore, a situation where an individual, claiming to have exercised due care, came to a State Park and slipped on wet stones on a rainy day in an area where there is a natural spring flowing.

The State is not an insuror against accidents occurring to patrons while using the park. (22 C.C.R. 35, 22 C.C.R. 446.)

The Court also calls attention to the Doctrine of Assumed Risk as set forth in Volume 21, Page 467, C.C.R., which states further that "an individual who visits a State Park assumes the ordinary risk that would be attendant to such visits."

We would also like to call attention to Volume 22, C.C.R., Page 484, where the Court in passing upon an accident on a public street made the following statement "claimant is required to exercise a degree of care

commensurate with the circumstances and will not be heard to say that she did not see what she must have seen if she properly exercised her faculty of sight."

In this case, claimant was fully aware of the conditions existing at the fountain, having been there on many occasions, and would certainly have to have been aware of the conditions when he visited on the day in question when it was raining.

The Court would also like to call attention to a case recorded in Vol. **22,** C.C.R., Page **29.**

This case involved an accident at the same park. The facts in this case were as follows. **A** woman visitor at the Palisades State Park slipped and fell on the concrete floor of the Women's Lavatory, located in the park. This particular floor was of smooth concrete, sloping in all directions toward a drain which was countersunk in approximately the center of the floor. The accident happened on June **25, 1950,** and the moisture was apparently caused by the condensation of moisture in the air as it was hot and humid on the outside of the building, yet cool and comfortable on the inside of the lavatory building.

The Court, in passing upon this case, restated the proposition that the State is not an insuror of the safety of the patrons of the park and that further the conditions complained of were apparent to the injured party, and that she should have observed such **a** degree of care for her own safety as would be necessary and that she also assumed whatever risk was involved in going upon the wet floor.

This case is certainly greatly similar to the present case as, in both instances, the injured parties had full knowledge of the conditions and yet, despite this knowledge, proceeded to go upon the premises, resulting in the injuries in question.

It is the finding of this Court, therefore, that the burden of proof is upon the claimant to show freedom from contributory negligence and when he fails to make such burden, his claim will be denied, and it is our opinion in the present case that claimant failed to make such proof and the claim is, therefore, denied.

(No. 6359—Claimant awarded $7,479.15.)

PHILLIPS PETROLEUM COMPANY, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

***Opinion filed November* 28, 1972.**

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6405—Claimant awarded $3,510.00.)

GOOD **SHEPHERD** MANOR, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November* 28, *1972.

GOOD SHEPHERD MANOR, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6443—Claimant awarded $8,953.78.)

CITIES SERVICE OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed November 28, 1972.

CITIES SERVICE OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6652—Claimant awarded $649.23.)

ILLINOIS NATIONAL BANK, Agent for A. D. KUFDAKIS, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed November 28, 1972.

ILLINOIS NATIONAL BANK, Agent for A. D. KUFDAKIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6691—Claimant awarded $108.47.)

W. T. GRANT COMPANY, A Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November ***28,*** 1972.

APOIAN AND ROSS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.

WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6810—Claimant awarded $400.00.)

NORMAN J. GREGORY, Claimant, *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed November 28, 1972.

EDWARD E. REDA, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6857—Claimant awarded $746.25.)

DONNA WALSH SANCHEZ, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF LABOR,** Respondent.

Opinion filed November 28, 1972.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6875—Claimant awarded $168.50.)

TRAVENOL LABORATORIES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November 28, 1972.

TRAVENOL LABORATORIES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6917—Claimant awarded $110.00.)

DONNA POTRATZ, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November 28, 1972.

LYTTON AND DALTON, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6920—Claimant awarded $248.00.)

FERRO CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed November 28, 1972.

FERRO CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6944—Claimant awarded $132.00.)

ROBERT A. WILLIAMSON CO., Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed November ***28, 1972.***

ROBERT A. WILLIAMSON Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6947—Claimant awarded $191.10.)

DANIEL N. MICHEL, SHERIFF OF FAYETTE COUNTY, ILLINOIS, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed November 28, ***1972.***

DANIEL N. MICHEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6954—Claimant awarded $469.95.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, **us. STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed November 28, 1972.

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6419—Claimant awarded $1,290.00.)

DORTCH THE MOVER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed December 8, **1972.**

DORTCH THE **MOVER,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comers-lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6637—Claimant awarded $30.00.)

MCLEAN COUNTY MENTAL HEALTH CENTER, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 8, **1972.**

MCLEAN COUNTY MENTAL HEALTH CENTER, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6680—Claimant awarded $1,489.00.)

HERSCHEL L. SUNLEY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENTS OF PUBLIC HEALTH AND GENERAL SERVICES, Respondent.

Opinion filed December 8, 1972.

HERSCHEL L. SUNLEY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6811—Claimant awarded $2,130.63.)

DONOHOE ASPHALT AND PAVING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December 8, 1972.

DONOHOE ASPHALT AND PAVING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6853—Claimant awarded $332.41.)

MARION P. LINDSAY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed December 8, 1972.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,

Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6882—Claimant awarded $940.00.)

LEXINGTON HOUSE, INC., A Delaware Corporation, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed December 8, **1972.**

LEITER, NEWLIN, FRASER, PARKHURST and MCCORD, Attorney for Claimant.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 8913—Claimant awarded $8.00.)

MASON-BARFION LABORATORIES, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed December 8, **1972.**

MASON-BARRON LABORATORIES, Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6918—Claimant awarded $151.00.)

COWELL AND LEWIS, INC., A Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 8, *1972.*

THOMAS, THOMAS & MAGGIO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5202—Claim denied.)

PETER BERKIN, Administrator of the Estate of ELENA BERKIN, also known as JOAN ASHLEY, Deceased, and SARA BERKIN, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December *13, 1972.*

MILLER AND KORETZKY, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER and BRADLEY M. GLASS, Assistant Attorneys General, for Respondent.

MENTAL INSTITUTIONS—*duty of* care. The State has to exercise such care that individuals under its custody will not have the opportunity to inflict a foreseeable injury upon others.

HOLDERMAN, J.

A Complaint was filed on December 3,1964, by Peter Berkin, Administrator of the Estate of Elena Berkin, also known as Joan Ashley, deceased, and Sara Berkin.

The Complaint alleges that Sara Berkin is the owner and/or beneficiary of the claims set forth herein as the mother of Elena Berkin, deceased, arising out of the wrongful death of her said daughter on December 7,1962.

The deceased was murdered on December 7,1962, by one Joseph Csanyi.

Joseph Csanyi, former Hungarian Revolution fighter, was admitted to the United States in 1956. He was committed to the Chicago State Hospital on March 17, 1962, by the County Court of Cook County as a schizophrenic of a paranoid type, suffering from hallucinations and delusions of being threatened with death.

On April 10, 1962, the Chicago State Hospital discharged said patient. On July 26, 1962, Joseph Csanyi was again committed to the Chicago State Hospital by the County Court of Cook County.

On November 24, 1962, Joseph Csanyi was conditionally discharged to his own custody by the Chicago State Hospital.

Prior to his first commitment, said Joseph Csanyi worked as a watchmaker for the firm of Schierer and Popp Jewelers. After his first discharge from the hospital, he returned to his former employers on a full-time basis. After his second or conditional discharge, he returned to this employment first on a part-time basis and later on a full-time basis.

When he first worked for the jewelry firm, said Joseph Csanyi returned to the hospital at night but later on his own request, he was allowed to leave the hospital and consequently, found living quarters in the same apartment building as the deceased.

It appears that said Joseph Csanyi was a total stranger to Elena Berkin, though they did live in the same apartment building.

It also appears that said Joseph Csanyi was confined to a mental hospital in the State of Indiana for a short period

of time, the exact period of confinement not being stated in the record.

The record discloses that this individual lived alone, had few friends, one of them being a nurse at the Chicago State Hospital, who spoke Hungarian, and also a doctor.

His work as a watchmaker, according to the record, was excellent and he was a good employee.

It appears that the reason for a condition rather than an absolute discharge was the fact that he had been previously hospitalized and there was a clinical indication that he have available the possibility of reentering the hospital without any commitment procedures and also for the purpose of maintaining contact with the patient to determine if he had a relapse serious enough to require hospitalization and for the purpose of supervising medication.

It appears that the treatment given him at the hospital consisted of drugs and an attempt to get him to join "Thresholds" which is a group for the purpose of furnishing social therapy to individuals such as Joseph Csanyi. He did not join "Thresholds."

The psychiatrist in charge of this individual testified that the relapse rate is rather high among schizophrenics and that aftercare is important.

The paranoid schizophrenic feels that others are against him and reacts in a bizarre manner and is unpredictable.

Joseph Csanyi would have periods of despondency and expressed the belief that people were following him and talking about him. He was also under the delusion that the Communists were after him.

There is considerable evidence to the fact that this individual would withdraw unto himself and have spells of crying but the record is completely silent as to any acts of

violence of any kind or character. There is not any record of any assaultive behavior after his arrival in this country.

On the 2nd or 3rd of December, 1962, his employer noticed that he seemed more morose than before. At one time he ordered a hamburger which he sat and stared at for a long period of time.

One of his employers, Mr. Schierer, testified that on the 2nd or 3rd of December, 1962, he called a Mr. Jensen, one of the personnel of the Chicago State Hospital, and informed him that Joseph Csanyi seemed to be much worse than he had been.

Mr. Schierer stated that prior to the time he called Mr. Jensen, he would walk back to where Joseph Csanyi was working and would find him .in tears, and that after he talked to him for awhile, he would be all right and would continue with his work.

The evidence shows that part of the treatment for Joseph Csanyi had been the use of certain drugs which, according to the doctor, would quiet the patient down and relieve him of his delusions and hallucinations but the record does not disclose whether any of this medicine was administered shortly before or prior to the incident which caused the death of Elena Berkin.

The evidence is to the effect that drug therapy, primarily the use of tranquilizers, was the one favored and used by the doctors of this particular patient.

The evidence also discloses that after the call to the hospital, the condition of Joseph Csanyi, on the first part of December, was not improved. This matter was discussed by the staff of the hospital and the staff recommended that since the patient's work appeared not to be affected and since there had been no history **of** assaultive behavior, the vocational rehabilitation worker should continue to remain

in contact with the employer in the next few days to note any further regression.

It appears that Joseph Csanyi was not visited by any of the hospital staff and it is not known whether the patient had any antihallucinatory drugs after he left the hospital. There is evidence to the effect that these drugs, if taken, might have possibly prevented the incident in question.

It is the claimant's position that any paranoid schizophrenic is potentially dangerous and that this fact was well known to the State and that because of this condition, Joseph Csanyi should not have been allowed liberties that resulted in the death of the deceased.

The question is whether or not the State, by virtue of the telephone call of December **5, 1962,** calling attention to the apparent change in the condition of the patient and the fact that little was done except a telephone call to the patient by the Hungarian-speaking nurse was sufficient notice to the respondent that something should be done seems to be the crux of the present case.

What is reasonable care, under the circumstances, seems to be the criterion adopted by the various Courts in past opinions in similar situations.

The degree of care owed by the State in operating mental institutions is gone into at considerable length in Volume **22,** Court of Claims Reports, Page **722.** Rule appears to be that the State has to exercise such care that individuals under its custody will not have the opportunity ***to inflict a foreseeable injury upon*** others.

This brings forth the question whether or not the act of December 7, 1962, was foreseeable by the State and, consequently, one that should have prompted the State to take action which might have prevented the tragedy.

As stated before, the individual in question did not

have any record of any violence of any violent behavior. It is void of any violence of any kind or character and all that does appear is that this individual did have periods of retreat, crying, and hallucinations. There is no evidence of any impulsive actions of any kind or character and completely void of any criminal record.

Under the circumstances, therefore, we do not believe the State was negligent in this particular instance in not keeping this patient confined.

It is therefore the opinion of this Court that claimant is not entitled to an award.

(No. 6071—Claimant awarded $372.78.)

DE PAUL UNIVERSITY, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed December *13,* 1972.

DE PAUL UNIVERSITY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6226—Claimant awarded $156.00.)

ANESTHESIOLOGY ASSOCIATES OF ELGIN, S.C., Claimant, *vs.* STATE OF ILLINOIS, DIVISION of VOCATIONAL REHABILITATION, Respondent.

Opinion filed December *13,* 1972.

ANESTHESIOLOGY ASSOCIATES OF ELGIN, S.C., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriutwn. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6539—Claimant awarded $326.43.)

MARTIN On. SERVICE, INC., Claimant, us. STATE OF ILLINOIS, SECRETARY OF STATE AND DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December *13, 1972.*

MARTIN On, SERVICE, INC., Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriution. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6644—Claimant awarded $468.00.)

IBM CORPORATION, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed December *13, 1972.*

IBM CORPORATION, Claimant, pro se.

WILLIAM J. Scorr, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6818—Claimant awarded $8.00.)

MASON-BARRON LABORATORIES, INC., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 13, 1972.

MASON-BARRON LABORATORIES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6819—Claimant awarded $15.00.)

MASON-BARRON LABORATORIES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 13, 1972.

MASON-BARRON LABORATORIES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6906—Claimant awarded $514.50.)

KOEHLER BINDERY, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 13, 1972.

KOEHLER BINDERY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6936—Claimant awarded $386.40.)

MAYFAIR SUPPLY COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December *13, 1972.*

MAYFAIR SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER *CURIAM.*

(No. 6938—Claimant awarded $2,116.96.)

EDWARD HINES LUMBER CO., A Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed December 13, *1972.*

BRODL, DAUCHERTY AND GIULIANO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6940—Claimant awarded $1,533.33.)

THE WESTERN UNION TELEGRAPH COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed December 13, *1972.*

ECKHART, MCSWAIN, HASSELL and SILLIMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5948—Claimant awarded $1,411.87.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed December *15,* 1972.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6157—Claimant awarded $7,051.49.)

HUMBLE OIL & REFINING COMPANY, A Corporation, Claimant, *vs.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed December *15,* 1972.

GIFFIN, WINNING, NEWKIRK AND COHEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6308—Claimant awarded $299.12.)

LAWRENCE JONES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed December *15, 1972.*

LAWRENCE JONES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6929—Claimant awarded $105.00.)

BEULAH FORD RAY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed December *15, 1972.*

HERSCH Y. FRANKS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6948—Claimant awarded $500.00.)

JOHN R. BATEMAN, M.D., Claimant, **vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed December *15, 1972.*

DR. JOHN R. BATEMAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6948—Claimant awarded $1,002.50.)

D. ADOLPHUS RIVERS, **Claimant,** *vs.* **STATE OF ILLINOIS, ILLINOIS FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.**

Opinion filed December ***15, 1972.***

D. ADOLPHUS RIVERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7011—Claimant awarded $59.43.)

EDWARD G. BRODIE, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF FINANCIAL INSTITUTIONS, Respondent.**

Opinion filed December ***15, 1972.***

EDWARD G. BRODIE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6211—Claimant awarded $300.00.)

ARMANDO SUSMANO, M.D., **Claimant,** *vs.* **STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.**

Opinion filed December ***21, 1972.***

DR. ARMANDO SUSMANO, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6213—Claimant awarded $160.00.)

MARVIN S. ROSENBERG, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed December 21, 1972.

DR. MARVIN S. ROSENBERG, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6812—Claimant awarded **$89.50.)**

KROCH'S AND BRENTANO'S, INC., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed December 21, 1972.

KROCH'S AND BRENTANO'S, INC., Claimant, pro se.

WILLIAM J. SCOTT,Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6864—Claimant awarded $3,579.51.)

ELBRIDGE A. FORT, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 21, 1972.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6708—Claimant awarded $147.00.)

MARCOS OLIVA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 26, 1972.

MARCOS OLIVA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6806—Claimant awarded $74.82.)

CARR'S, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed December 26, 1972.

ROBERT M. GROSSMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6949—Claimant awarded $495.00.)

ROBERT F. Scorn, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December 26, 1972.

ROBERT F. SCOTT, Claimant, pro'se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6955—Claimant awarded $247.68.)

CONTINENTAL OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December 26, 1972.

CONTINENTAL OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6957—Claimant awarded $10.42.)

CONTINENTAL OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December 26, 1972.

CONTINENTAL OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6963—Claimant awarded $2,285.60.)

HOPKINS, SUTTER, OWEN, MULROY AND DAVIS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed December 26, 1972.

HOPKINS, SUTTER, OWEN, MULROY AND DAVIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6984—Claimant awarded $12.00.)

ZION BENTON HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 26, 1972.

ZION BENTON HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6985—Claimant awarded $1,433.07.)

CHICAGO PAPER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, LEGISLATIVE INVESTIGATING COMMISSION, Respondent.

Opinion filed December 26, 1972.

CHICAGO PAPER COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6987—Claimants awarded $3,856.43.)

WAYNE DAVENPORT AND KENNETH DAVENPORT, d/b/a DAVENPORT BUILDERS, A Partnership, Claimants, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed December 26, 1972.

CHARLES J. GRAMLICH, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6991—Claimants awarded $9.20.)

EDWARD L. JONES, ROBERT NEWELL, JOHN N. JURGENS, AND CHARLES K. DUTCH, Claimants, *vs.* STATE OF ILLINOIS, CASS COUNTY EDUCATIONAL SERVICE REGION, Respondent.

Opinion filed December 26, 1972.

LELAND SCHNAKE, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6996—Claimant awarded $878.00.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, ***vs.*** **STATE** OF **ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed December 26, 1972.

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, pro se.

WILLIAM, J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—***lapsed appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7038—Claimant awarded $24,480.00.)

MISSOURI ROLLING MILL CORPORATION, Claimant, ***vs.*** **STATE** OF **ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed December 26, 1972.

MISSOURI ROLLING MILL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—***lapsed appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6012—Claimant awarded $74.56.)

GLICK PRESCRIPTION PHARMACY, Claimant, ***vs.*** **STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed January 9, 1972.

GLICK **PRESCRIPTION** PHARMACY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the ***Court*** will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6132—Claimant awarded $171.00.)

LAVENTHOL, KREKSTEIN, HORWATH & HORWATH, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed January 9, 1973.

LAVENTHOL, KREKSTEIN, HORWATH & HORWATH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6133–Claimant awarded $155.00.)

LAVENTHOL, KREKSTEIN, HORWATH & HORWATH, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed January 9, 1973.

LAVENTHOL, KREKSTEIN, HORWATH & HORWATH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the ***Court*** will enter an award for the amount due claimant.

PER CURIAM.

(No. 6212–Claimant awarded $75.00.)

JOSEPH J. MUENSTER, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed January **9, 1973.**

JOSEPH J. MUENSTER, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6225—Claimant awarded $1,450.00.)

J. P. PHILLIPS, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed January **9, 1973.**

ANGELO RUGGIERO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6380—Claimant awarded $1,622.30.)

CENTRAL PLAZA HOTEL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January **9, 1973.**

CENTRAL PLAZA HOTEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6504—Claimant awarded $4,310.10.)

DIANA RATKOVICH, A Minor by Her Father, JOHN RATKOVICH, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 9, 1973.

JOHN RATKOVICH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6533-Claimant awarded $677.34.)

MICHIGAN BLVD. GARDEN APARTMENTS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed January 9, 1973.

MICHIGAN BLVD. GARDEN APARTMENTS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6606—Claimant awarded $1,495.04.)

CHARLES FISHER, Claimant, *vs.* STATE OF ILLINOIS, INDUSTRIAL COMMISSION, Respondent.

Opinion filed January 9, 1973.

SUDAK, GRUBMAN, ROSENTHAL & FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6612—Claimant awarded $326.11.)

MARYVILLE ACADEMY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed January 9, 1973.

M. I. MCMAHON, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6761—Claimant awarded $11,577.90.)

LORETTO HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed January 9, 1973.

LORETTO HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6782—Claimant awarded $1,275.00.)

GRAND SPAULDINC DODGE, INC., An Illinois Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed January 9, 1973.

RALPH M. BERNSTEIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* **appropriation.** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6823—Claimant awarded $242.00.)

EDNA P. KAYE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed January 9, 1973.

EDNA P. KAYE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* **appropriation.** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6849—Claimant awarded $234.06.)

FARGO BEACH HOME, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 9, 1973.

JEROME GAROON, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6850—Claimant awarded $4,219.00.)

FARGO BEACH HOME, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 9, 1973.

JEROME GAROON, Attorney for Claimant.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the *Court* will enter an award for the amount due claimant.

PER CURIAM.

(No. 6905—Claimant awarded $213.40.)

AERO AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 9, 1973.

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6907—Claimant awarded $1,617.00.)

CABRINI-GREEN COMMUNITY MARKET, INC., d/b/a/ JET COMMUNITY MARKET, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed January 9, 1973.

CABRINI-GREEN COMMUNITY MARKET, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the *Court* will enter an award for the amount due claimant.

PER CURIAM.

(No. 6924—Claimant awarded $500.00.)

D. A. MANELLI, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, respondent.

Opinion filed January 9, 1973.

D. A. MANELLI, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropsiation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6928—Claimant awarded $108.27.)

BEULAH RAY, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed January 9, 1973.

HERSCH Y. FRANKS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7020—Claimant awarded $235.79.)

LOYOLA UNIVERSITY HOSPITAL, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed January 9, 1973.

LOYOLA UNIVERSITY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7024—Claimant awarded $2,109.18.)

M. J. KELLNER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed January 9, 1973.

M. J. KELLNER COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-7—Claimant awarded $858.48.)

KATHRYN D. HAWKINS, Executor of the Will of NOEL HAWKINS, Deceased, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed February 1, 1973.

HAGLUND AND GRETLER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6294–Claimant awarded $789.10.)

HIGHLAND PARK HOSPITAL FOUNDATION, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed February 1, 1973.

HIGHLAND PARK HOSPITAL FOUNDATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 8530—Claimant awarded $1,800.00.)

APPROVED HOME, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENTS OF MENTAL HEALTH AND PUBLIC AID, Respondent.

Opinion filed February 1, 1973.

KREGER & KARTON, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 8568–Claimant awarded $178.15.)

BISMARCK HOTEL, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed February 1, 1973.

BISMARCK HOTEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropridion.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BURKS, J.

(No. 6614—Claimant awarded $80.00.)

CHAMPAIGN COUNTY MENTAL HEALTH CENTER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 1, 1973.

CHAMPAIGN COUNTY MENTAL HEALTH CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6626–Claimant awarded $556.25.)

COLLEGE ADVISORY PROGRAM, THE JUNIOR LEAGUE OF EVANSTON, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 1, 1973.

COLLEGE ADVISORY PROGRAM, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6653—Claimant awarded $1,378.84.)

JAMES YENERICH, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed February 1, 1973.

EDWARD M. SULLIVAN, Attorney for Claimant.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6718—Claimant awarded $1,500.63.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed February 1, 1973.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. Scott, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6720—Claimant awarded $408.80.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed February 1, 1973.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6751—Claimant awarded $772.80.)

MARYVILLE ACADEMY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed **February 1, 1973.**

MARYVILLE ACADEMY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6808—Claimant awarded $1,197.15.)

MEMORIAL HOSPITAL OF SPRINGFIELD, ILLINOIS, An Illinois Not-For-Profit Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **February 1, 1973.**

ROBERT H. STEPHEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6836—Claimant awarded $55.00.)

A. A. PALOW, M.D., Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed February *1, 1973.*

A. A. PALOW, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6867—Claimant awarded $99.37.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February *1, 1973.*

D. K. MCINTOSH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6889—Claimant awarded **$11.59.**)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed February *1, 1973.*

D. K. MCINTOSH, **Attorney for Claimant.**

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6871—Claimant awarded $11.24.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, ILLINOIS STATE MUSEUM, Respondent.

Opinion *filed* February *1, 1973.*

D. K. MCINTOSH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6872—Claimant awarded $23.19.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed February *1, 1973.*

D. K. MCINTOSH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WFXLER, Assistant Attorney General, for Respondent,

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6873—Claimant awarded $37.88.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed February *1, 1973.*

D. K. MCINTOSH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6904—Claimant awarded $71.76.)

AUTO PARTS COMPANY, Claimant, *vs.* **STATE** OF **ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed February 1, 1973.

AUTO PARTS COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, **Attorney General; WILLIAM** E. **WEBBER, Assistant Attorney General, for Respondent.**

Comas— lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6945—Claimant awarded $579.50.)

MARSTERS SIGN COMPANY, Claimant, **vs. STATE** OF **ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed February 1, 1973.

MARSTERS SIGN COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, **Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6956—Claimant awarded $9.47.)

CONTINENTAL OIL **COMPANY,** Claimant, **vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed February 1, 1973.

CONTINENTAL OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6961—Claimant awarded $341.78.)

CHARLES MORTKOWICZ, MORTKOWICZ NURSING HOME, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 1, 1973.

CHARLES MORTKOWICZ, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6979—Claimant awarded $278.80.)

TEXACO, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed February *1,* 1973.

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6980—Claimant awarded $58.36.)

TEXACO, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion **filed** February *1,* 1973.

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridwn. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6989—Claimant awarded $40.62.)

GLICK MEDICAL AND SURGICAL SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 1, 1973.

GLICK MEDICAL AND SURGICAL SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6998—Claimant awarded $585.58.)

BIUCK MOOMCHI, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed February 1, 1973.

BIUCK MOOMCHI, Claimant, pro se.

WILLIAM J. Scon, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7003—Claimant awarded $438.18.)

PARKE, DAVIS AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 1, 1973.

PARKE, DAVIS AND COMPANY, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7004—Claimant awarded $145.13.)

GULF OIL COMPANY—U.S., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed February 1, 1973.

P. K. FITZWILLIAM, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7013—Claimant awarded $91.18.)

MOBILE DRILLING COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 1, 1973.

MOBILE DRILLING COMPANY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7017—Claimant awarded $175.35.)

INTERROYAL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed February *1, 1973*

INTERROYAL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 702.3—Claimant awarded $257.16.)

KAROLL'S, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed February 1, *1973.*

KAROLL'S, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7053—Claimant awarded $324.74.)

ITEK BUSINESS PRODUCTS, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed February ***1, 1973.***

ITEK BUSINESS PRODUCTS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 7068—Claimant awarded $332.25.)

COMMUNITY **GENERAL HOSPITAL,** Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed February ***1, 1973.***

COMMUNITY GENERAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 6198—Claimant awarded $330.00.)

BELL AND HOWELL SCHOOLS, INC., Claimant, ***vs.*** **STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION,** Respondent.

Opinion filed February ***9,*** 1973.

BELL AND HOWELL SCHOOLS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6460—Claimant awarded $1,528.52.)

CHAS. TODD, INC., Claimant, *vs.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed February 9,1973.

CHAS. TODD, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6591—Claimant awarded $2,120.43.)

DR. DONALD R. DONICA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 9, 1973.

DR. DONALD R. DONICA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6750—Claimant awarded $1,621.20.)

MARYVILLE ACADEMY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 9, 1973.

MARYVILLE ACADEMY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6795—Claimant awarded $675.50.)

WOODARD SIGNS, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February **9, 1973.**

WOODARD SIGNS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6859—Claimant awarded $379.00.)

STANLEY B. WISSNER, Claimant, os. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed Februay **9, 1973.**

DOWNS, HADDIX & SCHWAB, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6878—Claimant awarded $2,349.45.)

ST. FRANCIS HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 9, 1973.

ST. FRANCIS HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6879—Claimant awarded $303.50.)

ST. FRANCIS HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed February 9, 1973.

ST. FRANCIS HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6899—Claimant awarded $1,081.75.)

R. HERSCHEL MANUFACTURING CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 9, 1973.

R. HERSCHEL MANUFACTURING CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6968—Claimant awarded $145.00.)

FORREST H. RIORDAN, III, **M.D., Claimant,** ***vs.*** **STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.**

***Opinion filed February* 9, 1973.**

DR. **FORREST H.** RIORDAN, III, Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6972—Claimant awarded $307.00.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, ***vs.*** **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.**

***Opinion filed February* 9, 1973.**

CENTRAL OFFICE **EQUIPMENT** COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6990—Claimant awarded $1,636.56.)

THE AUGUSTANA NURSERY, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

***Opinion filed February* 9, 1973.**

THE AUGUSTANA NURSERY, Claimant, pro se.

WILLIAM J. **Scorr,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6993-Claimant awarded $824.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC Am, Respondent.

Opinion filed February **9, 1973.**

WARREN KRINSKY, Attorney for Claimant.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7007—Claimant awarded $108.39.)

GULF OIL COMPANY—U.S., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed February **9, 1973.**

GULF On, COMPANY—U.S., Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7008—Claimant awarded $5,384.71.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed February 9, 1973.

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7009—Claimant awarded $9,854.33.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed February 9, 1973.

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7010—Claimant awarded $20.00.)

COMMUNITY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 9, 1973.

COMMUNITY HOSPITAL, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7033–Claimant awarded $1,955.00.)

WILLIAM J. HAGSTROM, JR., M.D., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 9, 1973.

DR. WILLIAM J. HAGSTROM, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 7039—Claimant awarded $7,081.66.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, vs. STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion *filed* February 9, 1973.

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7041—Claimant awarded $3.35.)

SITE OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed February 9, 1973.

SITE OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7045—Claimant awarded $7.61.)

CONTINENTAL OIL COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 9, 1973.

CONTINENTAL OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7050—Claimant awarded $210.75.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed February 9, 1973.

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7064—Claimant awarded $2,230.80.)

GAMMA PHOTO LABS, INC., Claimant, vs. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed February 9, 1973.

GAMMA PHOTO LABS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— lapsedappropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7070—Claimant awarded $1,909.74.)

UNITED LABORATORIES, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed February 9, 1973.

UNITED LABORATORIES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— lapsedappropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7071—Claimant awarded $90.50.)

RICHARD L. COOPER, Claimant, vs. STATE OF ILLINOIS, POLLUTION CONTROL BOARD, Respondent.

Opinion filed February 9, 1973.

RICHARD L. COOPER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— lapsedappropridion. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5422—Claimant awarded $15,348.47.)

HARRY B. WILLIAMS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February *15, 1973.*

MASSEY, ANDERSON, GIBSON & PEARMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

DISCRIMINATION—*age*. Where claimant's pay was reduced solely because of his age, even though his duties remained the same, the state policy against age discrimination would be applied retroactively and the lost wages will be awarded to him.

BURKS, J.

This is an action by Harry B. Williams to recover $16,051.26, which sum he claims is due him for loss of wages and retirement benefits because of alleged discriminatory practices of the Department of Public Works and Buildings of the State of Illinois while claimant was employed by said department.

Claimant charges that, in his case, respondent unjustly discriminated against him in his employment solely because of his age, a practice which the legislature subsequently declared to be against the public policy of this state (Ch. 48, Sec. 881, Ill.Rev.Stat., 1967, Approved July 26, 1967). We notice, incidentally, that the effective date of this Act was approximately 12 days before claimant's employment was terminated by the respondent on August 7, 1967. We will allude to said statute later in this opinion.

Respondent admits all of the facts presented by the claimant but contends that the facts do not legally justify or support claimant's cause of action. Respondent takes the

position that the policy of its Division of Highways concerning retirement, on which this action is based, was a legal exercise of regulatory power; uniformly applied to all engineers of claimant's age and class; and that claimant could have resigned if he did not choose to acquiesce in said policy and his financial loss resulting therefrom.

The undisputed facts are restated as follows:

The claimant, Harry **B.** Williams, is and has been since **1930,** a registered professional engineer. His Illinois license is No. **62-5310.** He was **57** years of age when he was employed by respondent's Division of Highways as a Civil Engineer I in February, **1956.** Claimant worked as an engineer in said division until his employment was terminated August **7,1967,** because he was then **68** years of age. His termination because of his age was mandatory under a retirement policy adopted by the Division of Highways in **1963** and revised in **1967.** The total period of claimant's employment with the State was **11.48** years.

During the first **8** years of claimant's employment, **1956-1964,** he was advanced in position first to Civil Engineer 11 and then to Civil Engineer 111 with attendant increases in salary applicable to his classification. It was the treatment claimant received during the last **3½** years of his employment and after his retirement on which he bases this action, i.e., a reduction in salary from a high of **$775** to **$500** per month; a demotion in job classification without any change in duties or responsibilities; and his forced retirement at age **68** with reduced pension benefits.

At this point certain important facts in the record should be emphasized which indicate that claimant's reduction in salary, his demotions in position title, and his forced retirement at age **68** were all based solely on age and on no other factors.

Claimant had been performing the duties of a Civil Engineer III during all of the last 5 years of his employment although his promotion to that title and salary, on the recommendation of his superiors, did not become effective until July 16, 1963. Claimant was then 64 years old. There was never any question as to claimant's physical or mental ability to perform his duties. He was never reprimanded or disciplined in any way. In each of his Annual Service Rating Reports he was rated "Very Good" by his superiors. To receive such a rating an employee must have a numerical rating of from 3.5 to 4.4 on his report. On his last annual report (1966) claimant received a numerical rating of 4.2. A grade of 4.5 is classified as "Excellent" according to the schedule printed on the report which measures the quality and quantity of an employee's work as well as his qualifications. We were impressed with the rating claimant received on all of his recent reports which were made a part of the record. We think it significant that claimant received the same high rating of 4.5 in each of the following: Dependability, punctuality and physical fitness. These appear to be high marks for an employee of any age.

We turn now to the policy of the Division of Highways on the matter of compulsory retirement which so adversely affected this claimant.

At the time claimant was employed in 1956, he was told by the District Engineer, Mr. Wydlick, that there was no compulsory retirement age for engineers and that he could work until he was 85 if he were able to do the job.

Some seven years later, the Division of Highways promulgated a compulsory retirement policy affecting the engineering staff, phasing out certain employees between the ages of 65-70, including the claimant. The said revised policy, effective July 1, 1963, provided in substance that employees over 65 years of age shall not receive a salary of

more than $600 per month; that employees over 67 years of age shall not receive a salary of more than $500 per month and that employees 70 or more years of age must resign or be released from the Division of Highways.

Despite this revised policy, claimant, who was then 64 years old, was promoted to Civil Engineer III with a salary increase to $775 per month, effective July 16, 1963. This apparently deserved promotion lasted for 5 months. On March 1, 1964, pursuant to the above stated policy, claimant was reclassified as Civil Engineer II and his pay reduced to $600 per month. Then, 26 months later, on May 1, 1966, claimant was reclassified as Civil Engineer I and his pay reduced to $500 per month. His salary remained at $500 per month until his forced retirement some 15 months later on August 7, 1967. During all of this time, claimant continued to perform the same regular and additional duties as he had done under the title of Civil Engineer III. The rate of pay for other Civil Engineer III's who were performing the same duties as claimant, increased from $775 to $950 per month in this same period of time.

There was no change in claimant's duties, hours of work, or vacation time in the period of July 1,1963, until his termination August 7, 1967, at age 68.

Claimant's compulsory retirement at age 68 rather than age 70 was forced by a further revision in respondent's policy, effective July 1, 1967.

We have carefully examined the documents in the record containing a copy of the regulations of the Division of Highways stating its personnel policy relating to retirement as revised July 1, 1963, and again July 1, 1967. The exact title of said regulations is stated as follows:

Personnel Policy Regarding Transfer or Movement of Employees of the Technical and Engineering Staff from Certain Supervisory and Management and Other Positions Because of Age and/or Reduced Capabilities

The pertinent provision in said regulations, as revised in 1967, which applied to the claimant, stated that "engineering employees over the age of 65 shall receive a salary not to exceed 70% of the salary received at age 65" and that "all employees of the engineering staff shall retire at the end of the first pay period following the date on which they reach the age of 68.

The same regulations contained a provision that certain employees, in higher positions than the claimant, who were required to vacate these positions at age 65, "may be assigned to other duties commensurate with his capabilities at an appropriate classification level and a salary not to exceed 70% of the salary received at age 65". This provision as to the "assignment to other duties" did not apply to the claimant. He was never assigned less duties and responsibilities. He was just paid a lower salary for performing the same duties after he reached the age of 65.

We hold that the aforesaid policy of the Division of Highways, as it was applied to the claimant, unjustly discriminated against him because of age.

It would have been different if claimant had been assigned duties that were less demanding on and after his 65th birthday; or if there had been any evidence that he was then less capable of performing the same duties that he had previously performed and continued to perform until he was terminated. The evidence was all the other way. Claimant continued to receive high praise from his superiors on his service rating reports. His only fault, apparently, was his age.

Just 12 days before claimant's employment was terminated, the legislature emphatically declared that discrimination in employment because of age was against the public policy of this State. We refer to an Act approved July 26, 1967 (Ch. *48, Sec. 881, et seq., Ill. Rev. Stat., 1967)*

which reads in part as follows:

881. (a) The General Assembly declares that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, deprives the State of the fullest utilization of its capacities for production and endangers the general welfare.

(c) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized as and declared to be a right of all of the people of the State which shall be protected as provided herein.

(d) It is hereby declared to be the policy of the State to protect the right recognized and declared in paragraph (c) of this Section and to eliminate all such discrimination to the fullest extent permitted. This Act shall be construed to effectuate such policy.

The above statute explicitly condemns and forbids the kind of discrimination suffered by the claimant as stated in his complaint.

Respondent does not specifically contend that the above statute could have no retroactive application to the retirement policy of the Division of Highways adopted in **1963.** Rather, respondent attempts to justify said policy under the following language of the same statute:

883. Nothing in this Act affects the retirement system of any employer where such system is not merely a subterfuge to evade the purpose of this Act; * * * Nor shall anything in this Act be construed as preventing the State or any political subdivision thereof or any other governmental agency from operating any program of compulsory retirement for its employees. (Ch. 48, Sec. 883, Ill.Rev.Stat.)

Respondent asks, "How can said retirement policy possibly be a subterfuge to evade the purpose of the Age Discrimination Act when the retirement policy was instituted several years prior to the enactment of the statute?" We believe the answer is obvious. The retirement policy was not a subterfuge. As applied to the claimant, but not to other employees in higher positions, it openly discriminated against this claimant solely because of his age. Such discrimination is forbidden by Sec. 881(a) cited above, which declares it to be "contrary to American principles of liberty and equality of opportunity."

Parenthetically, we take judicial notice of the fact that the "American principles of liberty" have been in existence a long time. We believe that such language in the Age Discrimination statute indicates the legislative intent that the Act may be applied retroactively. (See I.L.P. Statutes $193 and *Salmons* vs. Dutz (1958) 16 *Ill.App. 2d* 356.)

No one questions the right of the Division of Highways to operate a program of "compulsory retirement for its employees." That is specifically authorized by the statute in question (Sec. 883 supra). Respondent argues that the purpose of the retirement policy, which we find to be discriminating against the claimant, was "to encourage retirement at age 65 or as soon thereafter as practicable" rather than to make retirement compulsory at age 65. We find no such statement of intent in the said personnel policy issued in **1963** or in **1967.** The purpose of both orders are stated in the following words, exactly the same except for effective date:

"In order to insure efficient and progressive management and operation of the Division of Highways in achieving its objectives, on and after July 1, 1963, the following regulations will be applicable to the transfer or movement of employees from the supervisory and management positions listed under Section A and from other positions as indicated."

The regulations then proceed to state that all employees shall vacate the positions they hold on their 65th birthday; that all persons over 65 shall receive a lower salary and lower job classification; and that certain employees (all in higher positions than the claimant) shall be assigned to other duties commensurate with capabilities. There is no provision in the regulations for employees of claimant's age and class to be assigned "other duties". They merely take a lower salary and lower classification, according to the aforesaid published policy.

Whether the departmental regulation was uniformly applied to all employees affected by it, as respondent

contends, is irrelevant to the issue in this cause of action. All of the evidence in this record supports our finding that the said regulation, as it was applied to this particular claimant, discriminated against him solely because of his age. On and after his 65th birthday he continued to perform his same duties with a fine rating for efficiency, but his salary and classification were reduced. At the same time, other employees doing the same work were receiving increases in salary and classification.

The principal thrust of the respondent's argument is that claimant did not have to work for the State of Illinois under these circumstances. Claimant could and perhaps should have quit, according to respondent, rather than perform the same duties as other Civil Engineer III's but at a lower **salary than** the others received.

The undisputed fact is that the claimant protested his demotion and eventual termination at each step of the way. Despite his protests, the state continued to avail itself of the abilities of the claimant by continuously utilizing his skills and experience in the performance of the same duties he performed as a Civil Engineer **111.** In effect, the state was unjustly enriched by taking the services performed by the claimant without paying him the same compensation paid others performing the same work.

Why did claimant stay on? He hoped his protests would bear fruit; that he would be reinstated to his Civil Engineer III rate with a corresponding increase in rate of pay, and considered that these chances would be lost if he resigned.

To hold that the claimant loses his right to assert this claim because he did not quit his job and seek other employment at his age, or live on his comparatively meager pension benefits, would violate the spirit and intent of the law which prohibits discrimination in employment because of age.

To the extent that the departmental regulation was inconsistent with the Age Discrimination Act, the Director of the Department of Public Works and Buildings exceeded his power to prescribe such regulation. This is apparent from reading the words which limit the director's statutory authority on this subject in Ch. 127, *Sec. 16, Ill.Rev.Stat.*:

"The director of each department is empowered to prescribe regulations, *not inconsistent with law,* for the government of his department . . . ."

None of the cases previously decided by this court, which were called to our attention, dealt with the legality of a departmental regulation remotely similar to the regulation which we here hold to be illegal as it was applied to the claimant.

It appears that no Illinois cases interpreting the Illinois Age Discrimination Act of 1967 have been reported by the reviewing courts. We were, therefore, impressed with claimant's citation of an interpretation of the Federal Age Discrimination in Employment Act of 1967. Acknowledging that the said federal act is not directly applicable to claimant's situation, claimant correctly points out that it is a statutory enactment of prevailing public policy, not only on the federal level, but also at the state level just as the Illinois Statute, effective July 26, 1967, sets forth the public policy of this state against discrimination in employment on account of age.

Claimant submits the following statement from the "Administrator's Interpretations" of the Federal Act:

"Thus, for example, in a situation where it has been determined that an employer has violated the Act by paying a 62-year-old employee a prohibited wage differential of 50 cents an hour less than he is paying a 30-year-old worker, in order to achieve compliance with the Act, he must raise the wage rate of the older employee to equal that of the younger worker . . . ." *(Section 860.75, Page 401:5076 Fair Employment Practice Manual, Bureau of National Affairs)*

We find that claimant has proved his claim for damages by a preponderance of the evidence.

The amount which claimant demands as being due to him, if he prevails, is not disputed by the respondent. The amount of **$16,051.25** is carefully broken down and explained in a Bill of Particulars attached to the complaint and in claimant's Exhibit 14, admitted into evidence at the hearing. Since claimant's calculations as to his damages are not in dispute and are a part of the permanent record in this case, we will not repeat them here.

However, in carefully examining claimant's calculations in the aforesaid Exhibit **14,** the court noted that there should have been deducted from the amount of the award a sum equal to the additional amount claimant would have been required to contribute to his pension fund if he had been paid the additional salary to which we find he was legally entitled from March 1, 1964, to August 7, **1967.** The court called this matter to the attention of the parties, through the attorney for the respondent. We directed that the parties consult with the Department of Public Works and Buildings as to the rate of employee's contribution to the pension fund during the period in question and advise the court accordingly. By a joint stipulation filed January **29, 1972,** it was stipulated that the said "adjustment should be calculated as a **6%** reduction of the **$11,713.50** shown as salary loss" making the total reduction **$702.78.**

We therefore deduct the amount of **$702.78** from **$16,051.25,** the amount previously claimed and proved as claimant's damages, leaving **$15,348.47** as the net amount due the claimant.

The claimant, Harry B. Williams, is hereby awarded damages in the total sum of **$15,348.47.**

(No. **6915—Claimant** awarded **$186.50.**)

HARRY C. HENDERSON, JR., M.D., Claimant, *vs.* STATE OF **ILLINOIS, DEPARTMENT OF CHILDREN** AND **FAMILY** SERVICES, Respondent.

Opinion *filed* February *26,1973.*

DR. HARRY C. HENDERSON, JR., Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6943—Claimant awarded $22.85.)

TEXACO, INC., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed February *26, 1973.*

TEXACO, INC., Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriation.. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7000—Claimant awarded $778.73.)

ARM OLDHAM, Claimant, us. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion *filed* February *26,1973.*

ARCH OLDHAM, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7056—Claimant awarded $342.02.)

I.N.R. BEATTY LUMBER Co., Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed February 26, ***1973.***

I.N.R. BEATTY LUMBER Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7072—Claimant awarded $4,095.00.)

COLIND PHOTOGRAPHY, INC., Claimant, os. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed February 26, ***1973.***

COLIND PHOTOGRAPHY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7082—Claimant awarded $3,185.85.)

ST. THERESE HOSPITAL, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 26, ***1973.***

ST. THERESE HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—28—Claimant awarded $90.00.)

GESTETNER CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed March 2, 1973.

GESTETNER CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—60—Claimant awarded $463.76.)

IRVING B. CAMPBELL, Claimant, *vs.* STATE OF ILLINOIS, POLLUTION CONTROL BOARD, Respondent.

Opinion filed March 2, 1973.

IRVING B. CAMPBELL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—74—Claimant awarded $100.00:)

MT. OLIVET MEMORIAL PARK, LTD., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed March 2, 1973.

MT. OLIVET MEMORIAL PARK, LTD., Claimant, pro se.

WILLIAM J. Scorr, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* **When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.**

PER CURIAM.

(No. 8486—Claimant awarded $56.00.)
(Subrogee of Claimant awarded $399.22.)

PHILLIP W. PROULX, and ALLSTATE INSURANCE COMPANY as Subrogee of PHILLIP W. PROULX, Claimants, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC SAFETY, Respondent.

Opinion *filed March 2, 1973*

SIMON & INGRAM, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; MARTIN SOLL, Assistant Attorney General, for Respondent.

NEGLIGENCE—*failure to* **obey** *traffic* **sign. Where** *car* **driven by an employee** of **respondent ran a red light and collided with claimant's car, an award would be entered** for **claimant.**

BURKS, J.

This is a claim for damages to claimants' automobile which was struck by a state car driven by a state employee whose failure to obey a red light caused the accident.

At the hearing held on June 27, 1972, Philip W. Proulx, the claimant, was the only witness to testify for either side. He stated that on March 29, 1969, at approximately 3:00 p.m., he was west bound on the Congress Expressway (Eisenhower); that he was in no way contributorily negligent when he was struck on the right front of his automobile by a car driven by John T. Williams, southbound on Clark, who had disobeyed a red light causing the accident. He stated that the automobile driven by John T. Williams bore a license which indicated it belonged to the State of Illinois and had a state seal on the

side. The police report indicated that the said John T. Williams was an employee of the Division of Fire Prevention in the Illinois Department of Law Enforcement.

Claimant further stated that Mr. Williams told the police in his presence, "I thought I could make it but I didn't."

Claimant stated that he paid $56.00 of the repair bill and his insurer, Allstate, paid the balance. No other evidence was introduced by either party. There were three stipulations attached to and made a part of the record:

1. Total repair bill for claimant's car was $455.22.

2. Proof of Loss and Subrogation agreement by the claimant, Allstate Insurance Company.

3. Stipulation to waive briefs, abstracts, oral arguments, and any further evidence.

In the absence of any rebuttal testimony and in view of the stipulations, we find that claimant has proved a prima facie case and is entitled to an award in the amount of his damages. We hereby make the following awards in this cause:

To the claimant, Philip W. Proulx, the sum of $56.00.

To Allstate Insurance Company, as subrogee of Philip W. Proulx, the sum of **$399.22.**

(No. 6552—Claimant awarded $1,242.14.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed March 2, 1973.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6643—Claimant awarded $1,621.26.)

ALBERT MILLIGAN, d/b/a MILLIGAN REFRIGERATION AND APPLIANCE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

***Opinion filed March 2,* 1973.**

PAUL F. DAVIDSON, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6725–Claimant awarded $12.50.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

***Opinion filed March 2,* 1973.**

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6992—Claimant awarded $102.90.)

LODGE MANAGEMENT, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

***Opinion filed March 2,* 1973.**

LODGE MANAGEMENT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6995—Claimant awarded $18.54.)

COUNCIL HOUSE, Claimant, vs. **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion *filed March* 2, **1973.**

COUNCIL HOUSE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7006–Claimant awarded $364.17.)

GULF OIL COMPANY—U.S., Claimant, vs. **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *March* 2, *1973.*

GULF OIL COMPANY—U.S., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7019—Claimant awarded $1,753.07.)

LOYOLA UNIVERSITY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 2, 1973.

LOYOLA UNIVERSITY, **Claimant, pro se.**

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7036—Claimant awarded $129.40.)

DONALD W. VICKERS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 2, 1973.

DONALD W. VICKERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the *Court* will enter an award for the amount due claimant.

PER CURIAM.

(No. 7044—Claimant awarded $491.53.)

RESCO, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed March 2, 1973.

RESCO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7048—Claimant awarded $154.75.)

RETTA MAE ALLEN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion *filed* March 2, 1973.

RETTA MAE ALLEN, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7051—Claimant awarded $10.00.)

INGER ACKERMAN, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 2, 1973.

DR. INGER ACKERMAN, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7059—Claimant awarded $728.61.)

ACAN X-RAY—MICHIGAN, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 2, 1973.

ACAN X-RAY—MICHIGAN, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7061—Claimant awarded $130.11.)

XEROX CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion filed March 2, 1973.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7065–Claimant awarded $661.90.)

SANDERS ASSOCIATES, INC., Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed March 2, 1973.

SANDERS ASSOCIATES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7106—Claimant awarded $126.12.)

ROBERT P. RYAN, PH.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 2, 1973.

DR. ROBERT P. RYAN, Claimant, pro se.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6717—Claimant awarded $50.06.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed March 8, 1973.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Coma—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6722—Claimant awarded $125.67.)

ATLANTIC RICHFIELD COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed March 8, 1973.

ATLANTIC RICHFIELDCOMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Cowma—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6723—Claimant awarded $21.96.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PERSONNEL, Respondent.

Opinion filed March 8, 1973.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6910—Claimant awarded $37.00.)

AERO AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 8, 1973.

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6959—Claimant awarded $1,390.85.)

MERCYVILLE HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 8, 1973.

MERCYVILLE HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7026—Claimant awarded $510.00.)

LOUIS S. ELOVITZ, **Claimant, *vs.* STATE OF ILLINOIS, POLLUTION CONTROL BOARD, Respondent.**

Opinion *filed* March 8, **1973.**

LOUIS S. ELOVITZ, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7046—Claimant awarded $1,260.00.)

GEORGE D. KARCAZES, Claimant, *vs.* STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion ***filed*** March 8, **1973.**

GEORGE D. KARCAZES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7078—Claimant awarded $10,829.00.)

BOLOTIN, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion ***filed*** March 8, **1973.**

BOLOTIN, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—&Claimant awarded $1,092.00.)

AMERICAN HOSPITAL SUPPLY DIVISION, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 22, 1973.

AMERICAN HOSPITAL SUPPLY DIVISION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—16—Claimant awarded $105.46.)

ANGLELA J. D'AVERSA, Claimant, ***vs.*** **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed March 22, 1973.

ANGELA J. D'AVERSA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—19—Claimant awarded $26.64.)

TEXACO, INC., Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *March* 22, 1973.

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—30—Claimant awarded $120.00.)

JAMES R. ERLENBAUGH, d/b/a JAMES AMBULANCE SERVICE, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 22, 1973.

JAMES R. ERLENBAUGH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—31—Claimant awarded $33.13.)

FEHRENBACH CHEVROLET, INC. Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 22, 1973.

FEHRENBACH CHEVROLET, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—69—Claimant awarded $10,221.74.)

JAMES B. CONLISK, JR., as Superintendent, Chicago Police Department, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.

Opinion filed March 22, 1973.

RICHARD L. CURRY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—&Claimant awarded $13,437.50.)

INTOXIMETERS, INC., Claimant, *vs.* STATE OF ILLINOIS, ILLINOIS STATE POLICE, Respondent.

Opinion filed March 22, 1973.

INTOXIMETERS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—102—Claimant awarded $35.95.)

SHERATON ROCK ISLAND, Claimant, *vs.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed March 22, 1973.

SHERATON ROCK ISLAND, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—105—Claimant awarded $65.70.)

HILLTOP DRUGS, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 22, **1973.**

HILLTOP DRUGS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—107—Claimant awarded $93.00.)

JANICE D. HOUSTON, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 22, **1973.**

JANICE D. HOUSTON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73–CC—111—Claimant awarded $249.69.)

MER-ROC FS INC., Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed March 22, **1973.**

MER-ROC FS INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

Cornrum—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—122—Claimant awarded $15.84.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion *filed March* 22, 1973.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—140—Claimant awarded $210.00.)

ALDUS S. MITCHELL, Hearing Examiner, Claimant, *vs.* STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed March 22, 1973.

ALDUS S. MITCHELL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 4820—Claim denied.)

SAMUEL M. MCKENDREE, Claimant, *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.**

Opinion filed March 22, 1973.

UNGER, LITAK & GROPPI, Attorney for Claimant.

WILLIAM G. **CLARK,** Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

DRIVER'S LICENSE REVOCATION—*Administrative Review Act.* Following revocation of his driver's license by the Secretary of State, claimant could not pursue a claim for damages arising therefrom without first pursuing administrative remedies under the Administrative Review Act.

BURKS, J.

Claimant alleged that his restricted driver's license had been suspended by the Secretary of State "without legal justification" and claims damages for his financial loss, inconvenience, and distress resulting from the loss of his driving privileges.

We find that the facts in the record appear to support the actions of the Secretary of State as being proper and in accordance with the statutes.

In any event, this claim is barred by claimant's failure to pursue his proper remedy under the "Administrative Review Act" Ch. 110, *Sec. 265, Ill.Rev.Stat.* Such judicial review of any final act of the Secretary of State under the "Illinois Driver Licensing Law" *Ch. 95½, Sec. 6-421, Ill.Rev. Stat.* [substantially the same as Sec. 73.11 which was in effect when this claim was filed] was then, as it would be now, the first remedy a claimant must pursue, in this type of cause, before he can seek a determination of a claim for damages in this court. Court *of Claims Act Sec. 25.*

Although claimant subsequently obtained a restricted driver's license, we have no authority to conclude that his license was wrongfully revoked or suspended during the interim period for which he claims damages. Such a finding could only have been made by a court of competent jurisdiction.

At the time this action was brought, claimant could have obtained a judicial review of the Secretary's action in the Circuit Court of Vermilion County. Jurisdiction to review such matters is now restricted to the Circuit Courts of Sangamon or Cook Counties as stated in the following provision of the "Illinois Drivers' Licensing Law":

"§6-421 Judicial review. The action of the Secretary in cancelling, suspending, revoking or denying any license under this Act shall be subject to judicial review in the Circuit Court of Sangamon County or the Circuit Court of Cook County, and the provisions of the Administrative Review Act, approved May 8, 1945, and all amendments and modifications thereto, and the rules adopted pursuant thereto, are hereby adopted and shall apply to and govern every action for judicial review of the final acts or decisions of the Secretary under this Act."

This claim is hereby denied.

(No. 5357—Claimant awarded $17,500.00.)

ERNEST DEWEESE, Claimant, *vs.* STATE OF ILLINOIS, DEPT. OF PUBLIC SAFETY, Respondent.

Opinion filed March 22, 1973.

WISEMAN, HALLETT, MOSELE, SHAIKEWITZ AND STRUIF, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*injury to inmate.* Where guards were careless and negligent in the supervision of a vegetable house in which a potato dicing machine was located, an award would be entered for claimant for damages arising therefrom.

PRISONERS AND INMATES—*contributory negligence.* Doctrine of contributory negligence can apply to inmates of a State Penitentiary.

PRISONERS AND INMATES—*The Fellow Servant Rule.* In Illinois the "Fellow Servant" rule to an inmate of a prison is not an employee within the meaning of the Workmen's Compensation Act.

BURKS, J.

This is an action for damages to compensate claimant for permanent personal injuries he suffered while he was an inmate at Menard Penitentiary, injuries allegedly caused and aggravated by negligence of the respondent.

The accident which resulted in claimant's injuries oc-

curred on a Sunday morning, May **29,1966,** in the vegetable house of the penitentiary at Chester. Claimant was then and there assigned to the job of operating and then cleaning a potato dicing machine. The accident happened while he was cleaning the machine.

Claimant contends that he was following the proper method of cleaning the machine as he had previously been instructed; that he had just turned off the master switch located on an angle iron frame near the machine; pulled the plug, and wrapped the cord around a pipe. Then he stuck his hand into the chute to clean out potatoes lodged there so they wouldn't fall on the floor when he disassembled it. **As** his right hand was up into the chute, the machine suddenly turned on, seriously injuring claimant's right hand.

Claimant states that the machine was about four feet beyond the angle iron frame where the plug and switch were, and he did not see who plugged in the machine and turned on the switch.

Claimant said that on several previous occasions, and twice within the month before his injury, he had complained to the guards that various inmates were attempting to turn on the machine while he was cleaning it. Other claimant inmate witnesses, and even one of the respondent's witnesses, state that there was this type of horseplay carried on in the vegetable house. The claimant and two of his witnesses testified that the guards had knowledge of this, but permitted it to continue. It was undenied that Officer Grecco, who had charge of the vegetable house, had answered claimant's complaints by laughing and stating, "You guys have got to learn to look out for yourselves."

Claimant contends that the guard's failure to heed his repeated complaints, and other inmates' complaints, concerning the horseplay around the potato dicing machine and to take no steps to prevent such dangerous activities, displayed a lack of due care for the safety of the inmates;

that respondent's failure to supervise properly and to keep adequate control over the area to prevent other inmates from turning the machine on while claimant was cleaning it, constitutes actionable negligence on the part of the respondent.

Respondent denies that a prankster turned the machine on while claimant was cleaning it since no witness could or would testify that he actually saw this happen. Respondent argues that the only logical theory that can be assumed is that claimant caused his own injury by putting his hand into the potato slicer while it was in operation.

In support of its position, respondent relies heavily on the testimony of Officer Samuel Joseph Grecco who was in charge of the vegetable house where claimant was injured. Although Officer Grecco was not present or on duty on the day of the accident, he returned to his job the following day and made an investigation of the accident. Officer Grecco had been in charge of the vegetable house for a long time; had personally trained the claimant, DeWeese, in the proper method of operating and cleaning the potato dicing machine; and that he specifically ordered the claimant never to clean the machine or put his hand in the chute while the machine or the motor was running.

Officer Grecco testified that, in spite of his strict orders, five or six times before this accident, he found the claimant trying to clean the machine while it was still running by putting his hand up the chute. Each time, Officer Grecco said, he told the claimant he shouldn't do this and each time the claimant would answer, "I know what I am doing."

The court must first decide a disputed question of fact. Did the claimant cause his own injury by negligently putting his hand in the cutting chute while the machine was running? **Or** did some other person turn on the machine while claimant's hand was in the chute to clean it?

Before resolving this question of fact in favor of the

claimant, we carefully analyzed the voluminous record to determine the probable motives and the credibility of the witnesses as well as the fairness of the exhibits offered as evidence.

The six witnesses who testified for the respondent, on the question of the cause of the accident, were all to some degree under the control of the respondent. Four of the witnesses were inmates doing time and working under the supervision of Officer Grecco. There is a strong inference in the record that these witnesses had been coached by the respondent. Officer Grecco admitted that he talked to each inmate witness just before they testified. Respondent's other two witnesses, on the question of cause, were Officers Grecco and Hasten. Neither were present in the room when the accident occurred. Both are employees of the respondent.

By contrast, two witnesses for the claimant were former inmates who worked in the vegetable house with the claimant at the time of the accident but had been discharged from prison prior to the hearing. They were under no duress that might influence their testimony. Both former inmates, Everett Milligan and Willis Kissee, testified that, just prior to claimant's injury, they had seen inmates turn on machines to frighten other inmates, including the claimant, on numerous occasions. They both said that this type of prank was a common occurrence in the vegetable house and that the guards knew it.

Milligan said he was standing 10 or 12 feet from the claimant when the accident occurred. Immediately before the injury, he saw the claimant standing by his machine and he knew the machine was stopped because he didn't hear any noise from it. Milligan said the potato dicing machine is a noisy machine. He heard the machine click on, saw that claimant's hand was in it. Milligan did not see anyone turn the machine on because his eyes were on the injured claimant. "The room was cluttered, and I jumped over some vats

to get to claimant's machine to unplug it or throw the switch," Milligan said.

Further shaking the credibility of respondent's theory were 3 enlarged photos of the potato dicing machine, the plug, the cord, the switch, and the surrounding area which respondent offered in evidence. These photo exhibits are deliberately misleading. They do not show the machine in the same location that it was in at the time of claimant's injury. This was admitted by most of respondent's own witnesses. The photos show the machine touching the post to which the plug and switch are attached. At the time of the accident the machine was located three or four feet away from the switch and in such position that the operator would have his back towards the switch. In that location, it would have been nearly impossible for the claimant, while cleaning the machine, to observe a prankster turning it on.

We are also forced to take an incredible view of Officer Grecco's testimony. He said, and we agree, it is not customary for an inmate to talk back to a guard who has given the inmate a warning for violating an order. Yet, this officer said that five or six times before the accident, he had seen the claimant violate his order not to clean the machine while it was running; that he warned the claimant not to do this each time lie saw it; and that each time the claimant said, "I know what I am doing." Nevertheless, Officer Grecco said that he doesn't recall ever having punished the claimant or writing a ticket for him for talking back to an officer or for violating the rules. If Officer Grecco's statements are true, it would seem to compound and confirm claimant's charge of negligent supervision of the vegetable house.

Finally, even if the guards are negligent in enforcing the rules, we find it hard to believe that an inmate, who has had adequate instruction and experience in operating a potentially dangerous machine, would intentionally put his hand in the cutting chute while the noisy machine is in oper-

ation, particularly when he could turn it off by a flip of the switch. It could hardly be seriously argued that the inmate was in a hurry to finish his job because he had someplace better to go.

On the first of claimant's contentions, we conclude that the carelessness and negligence of the guards in the supervision of the vegetable house was the proximate cause of claimant's injury in the potato dicing machine.

In ***Moore*** vs. ***State, 21 C.C.R.282,*** we held that assigning a convict without proper instructions to work on a food grinder which was not equipped with a hopper amounts to actionable negligence. Following the same reasoning, the facts before us fully support an award to the claimant.

We do not follow ***Moore*** to the extent of holding that the doctrine of contributory negligence would not apply to inmates under certain circumstances. We specifically held that it did apply in ***Moe*** vs. ***State, 23 C.C.R.14.*** In ***Moe*** the claimant filed to sustain burden of proof that he was free from contributory negligence when cleaning the rollers on a soap grinding machine with a brush while it was in operation.

Here the facts are clearly distinguishable. We find the claimant free from contributory negligence.

We also reject respondent's argument that the "fellow servant rule" would relieve respondent from liability if we hold, as we have, that the machine was turned on in an act of horseplay by another inmate.

In Illinois the "fellow servant rule" applies only to employees "engaged in direct co-operation in the work of a common employer." ***I.L.P. Employment $132.*** This court has held that a convict is not an employee within the meaning of the Workmen's Compensation Act, ***Tiller*** vs. ***State, 4 C.C.R.243;*** nor within the meaning of the Health and Safety Act, ***Moore*** vs. ***State, 21 C.C.R. 282.*** The basis of our ruling in these cases is that the employment relationship

contemplated by the statutes [and in the case law cited in I.L.P. (supra)] is a voluntary one for wages, a relationship terminable by either party. A convict cannot meet such a test. He is an involuntary captive in the penitentiary. His life and movements are controlled by the respondent. We hold that the "fellow servant rule" is not applicable here.

We turn now to the nature, extent and permanency of claimant's injuries.

When claimant's right hand was removed from the potato cutting machine, his index finger was severed at the first joint, the skin on his middle finger and ring finger was ripped off to the bone; the fingers were badly mangled and he suffered a deep gash on his palm immediately below the fingers.

Claimant contends that the medical treatment and hospital care he received from prison officials and inmate nurses, following his injury, were so grossly negligent that his permanent injuries, disabilities and disfigurement were increased in severity; and that he endured unnecessary pain and suffering. If so, this would constitute a separate cause of action against the respondent even if we had held the respondent not liable for the claimant's original injury. See Witte vs. State, *21* C.C.R. *173.*

Having held that respondent's negligence was the proximate cause of claimant's injury in the vegetable house, it is not necessary for us to analyze in detail this voluminous record concerning his post-injury treatment in the prison hospital by the inmate nurse, and by the prison physicians. Suffice to say, claimant is entitled to an award for his total injury.

After the accident, claimant was taken to the prison hospital by inmate Charles Clutter. There, claimant's wounds were sutured on the three fingers involved by Dr. Donald Wham, the prison physician. Dressing was applied

and instructions were given to inmate nurse Hornbuckle to change the bandages, cleanse the hand daily, and to give medication for pain. It appears from the record that nurse Hornbuckle totally failed to follow any of these instructions and subjected the claimant to various forms of inhumane treatment. The State never called Hornbuckle as a witness to deny these charges. Three days after the lacerations were sutured by **Dr.** Wham, a surgeon from Chester, Dr. Milton Zemlyn, amputated the three middle fingers. This left the claimant with a thumb and little finger on his right hand plus the stumps of the three middle fingers which were amputated.

Some three months later, on September **20,** claimant was released from prison. Five months after his release, on February **11, 1967,** claimant's hand was examined by a private physician and surgeon, Dr. Robert Tatkow of St. Louis. Dr. Tatkow, whose qualifications as an expert in orthopedic surgery is stated in the record, testified for the claimant by deposition taken at his office. In his practice Dr. Tatkow has had experience in evaluating hand and finger injuries for workmen's compensation cases. When Dr. Tatkow examined the claimant nearly 10 months after the fingers were amputated, claimant was complaining of sensitiveness of the hand, particularly in cold weather, and pain in the stumps of the second, third and fourth fingers of the right hand. We quote the following questions and answers from the doctor's testimony:

"Q Doctor, medically, what do you attribute this pain to in the various portions of claimant's hand?

"A There is usually varying amounts of sensitivity at the end of stumps from amputated fingers for a long period of time, until the bone ends seal off and until the tissues at the end of the stumps become soft and malleable enough to withstand the pressures of use.

"Q Do you have an opinion, based upon a reasonable degree of medical certainty, as to how long it will take the stumps to become more immune to the touch? In other words, so there will be less pain?

"A This is impossible *to* say."

The doctor also said, "There was also a brownish coloration of the entire palm of the hand and right thumb, the etiology of which I'm not certain." Dr. Tatkow especially mentioned the smallness of the webbing between the fingers on the injured hand as being significant. "The combination of the short stumps and the decreased depth of the web space made picking up objects difficult, if not impossible." Claimant is right handed. The permanent loss of function of his right hand is approximately forty to fifty per cent, according to Dr. Tatkow.

There is no doubt that claimant's earning power has been affected and that he has lost some job opportunities as a result of his injury, as he alleges.

This brings us to the difficult question of determining the amount of claimant's award. Our courts have stated that "there is no fixed rule of compensation in damages for personal injuries, and that compensation is incapable of exact mathematical calculation." ***Swearinger*** vs. ***Kinger (1968)*** 91 *Ill.App.2d* ***251.***

Our court follows the rule stated in ***Z.L.P. Damages*** *§140*: "The measure of compensatory damages is such sum as will compensate the person injured for the loss sustained, with the least burden on the wrongdoer (State) consistent with the idea of fair compensation." We must also bear in mind that, at the time of claimant's injury, the legislature had fixed a limit of $25,000 on any award that may be allowed for personal injuries regardless of their severity.

For further guidance, we have reviewed a long list of cases from this and other jurisdictions containing court-computed damage awards for injuries similar to the claimant's. The wide range in the amounts awarded confirms the statement in ***Swearinger*** (supra). In ***22*** *Am.Jur.2d,* ***Damages $380,*** we find the following awards made to prisoners for hand injuries:

"—$35,000 awarded by court without jury; 16year-old boy; inmate of state correctional institution; right hand caught in electric printing press and crushed with loss of index, middle, and little finger; thumb stiff, tip of ring finger missing; loss of 70 to 80 percent use of hand; together with disfigurement of hand. *MacDonald* vs. **State** *(RI) 187 A2d 519."*

"—$6,000 awarded by court to 30-year-old prisoner who had worked as welder; traumatic amputation of all or part of four fingers causing 50 percent loss of use of right hand. *Colley* vs. **State,** *2 Misc 2d 545, 152 NYS2d 968."*

Considering all of the facts and circumstances in the case before us, we conclude that an award for damages to the claimant in the amount of $17,500 would be fair and reasonable.

Claimant, Ernest DeWeese, is hereby awarded damages for his personal injuries in the total sum of $17,500.00.

(No. 5598—Claim denied.)

JOHN E. BROWNBACK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March *22, 1973.*

JOHN E. BROWNBACK, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General, for Respondent.

HOTEL ACCOMODATIONS—*State* **Employees.** Where State employee incurred hotel expense in excess of guidelines set by his department, he would not be reimbursed for the amount of the bill in excess of the provided rate.

HOLDERMAN, J.

Claimant seeks to recover the sum of $124.90 for money allegedly due him for travel expenses while working for the Illinois Division of Highways in the Bureau of Materials.

In April, 1968, he was sent to the West suburban Chicago area for a field assignment. He stayed at a motel where he was charged $9.50 per day, which he claims to be the cheapest rate in the area.

The Division of Highways takes the position that the claimant was limited to Class C expenses and that the

claimant was well aware of the limitations in said Class C regulations. They further claim that he was paid in conformance with the existing policy of the Bureau of Materials and in conformance with Administrative Memorandum No. 32, which apparently are the guide rules fixed by the Department for this type of expense.

It appears to the Court that the claimant was paid the proper amount due him under the rules and regulations in force and effect, therefore nothing is due him at this time.

Claim is hereby denied.

(No. 5661—Claim denied.)

DENNIS COOK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed *March 22,* 1973.

SMITH & COMIEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

EVIDENCE—burden *of proof*. An affirmative statement by one witness met by a flat categorical denial by another, of equal credibility, does not meet the elementary requirement of the law that the plaintiff must make out his or her case by a preponderance of the evidence.

PRISONERS AND INMATES—*contributory negligence*. Prisoners contributory negligence precluded his recovery for injuries received when a steam iron injured him

BURKS, J.

Claimant seeks damages for a personal injury to his left hand allegedly caused by negligence of the respondent.

Claimant's left hand was burned in a steam clothes presser in the laundry room of the Illinois State Penitentiary at Pontiac, on July 3, 1968. He was then an inmate at the prison.

Claimant contends that, while he was pressing a shirt on the steam presser, as he said he was authorized to do, the

machine malfunctioned and the upper half of the press came down on his hand. He contends that the circumstantial evidence establishes respondent's negligence under the doctrine of res ipsa loquitur. Claimant also charges respondent with negligence in permitting the claimant to be around a dangerous machine without proper supervision and training.

Respondent contends that the presser functioned properly at all times; that claimant was not authorized to operate the machine; and that his injury was caused, or contributed to, by claimant's own negligence when he put his hand into a press which was being operated by another inmate.

The parties agree that claimant was authorized to be in the laundry at the time of the accident. He was there on an authorized errand, apparently to pick up clothes which he had delivered to the laundry early that same morning. After delivering clothes to the laundry, claimant went to school. He was attending classes at the prison to become a draftsman. (Incidentally, we were pleased to note claimant's statement at the hearing **2** years later, "I am now employed by the State of Illinois as a draftsman.")

After conceding that claimant's presence in the laundry was authorized, the record shows that most of the relevant facts are in dispute. There were several people in the laundry at the time of the accident, but no known available eyewitness.

The claimant and the respondent each presented one witness at the hearing. Claimant testified on his own behalf; and William Dick Billerbeck, the officer in charge of the laundry at Pontiac Penitentiary, testified on behalf of the State. These two witnesses contradicted each other on almost every point essential to claimant's case.

Claimant testified that, after school, he went to his cell to put his drawing equipment away and then went back to

the laundry to pick up the clothes. He arrived at the laundry about 1:30 p.m.; was proceeding to gather up the clothes when Officer Billerbeck told him to help finish some laundry that was there. Claimant said he went to work on a mangler, finished the work on that machine in about 10 minutes and then went over to the steam press where there was still a pile of clothes.

Claimant described the steam presser as a large ironing board shape affair with a cushioned platform on which you lay the clothes. The top half, where the steam circulates, comes down on an air cylinder. Claimant had never operated a steam press, never been given any instructions on how to operate it, but knew that you had to push **2** buttons to close the machine. Claimant said the **2** buttons, a distance apart, were a "safety feature" because you had to use both hands to press the buttons and thus your hands had to be away from the press when it came down.

The steam presser was apparently being operated by another inmate, Richardson, when claimant arrived at this machine. Claimant said he stood at the pointed end of the machine and Richardson was standing at the other end. Richardson laid a pair of pants on his end of the cushioned board, while claimant was laying on a shirt at the other end. Both of claimant's hands were in the machine. Claimant could see Richardson but could not see what position his hands were in. Claimant never touched the buttons to bring down the press. Claimant said that Richardson was looking the other way when the press came down on his hand. Claimant said, "I got one hand out and the other partially out. Richardson immediately got the press up. **I** don't know how he did it, but he got it up. I backed away, held my hand up and they took me to the hospital."

Respondent's witness, Officer Billerbeck, gave a somewhat different version of the incident in his testimony. Of-

ficer Billerbeck had been in charge of the prison laundry for 7 years prior to this accident.

"In my capacity as laundry manager I did not at any time engage inmates not assigned to the laundry to assist in the laundry or to assist my inmates. It was never done,"

Officer Billerbeck said. We continue with direct quotations from Officer Billerbeck's testimony as follows:

"Claimant was not assigned to the laundry. He was a runner for the vocational training classes."

On the day in question,

"Claimant did not pick up anything from the laundry or deliver anything to the laundry. He came in for his shirt. He had permission to have his shirt and overalls pressed and he had come over to pick them up. He came in and spoke to me and he wanted to know whether his shirt was ready. I said that it was down being pressed, and he walked over to the press. Inmate Richardson was operating the press.

"I saw inmate Cook walk over to the presser. That was twenty feet from the area where he was supposed to pick up the laundry. I didn't tell him that he shouldn't be around the machines. I did advise him that the machines were dangerous. But I did not at any time order him not to go over to the machines.

"Cook's shirt was being pressed at the time. Cook was standing there waiting for Richardson to finish his shirt. I heard Richardson scream out Cook was burnt, and by that time Richardson released the press. I covered Cook's hand and sent him to the hospital. He was in such pain I couldn't ask him what happened. I sent him directly to the hospital with Officer Sunnen.

"It was not unusual there would be a special order to press one inmate's shirt and trousers specially. We did that regularly. It did not interrupt or interfere with our schedule. The inmates running the machines were authorized to be in the laundry. The runners were authorized to come in and pick up the clothes. Any outside unauthorized inmate is not supposed to be near any of these machines.

"There would be no way for these machines to malfunction. The only way these machines can function is when the compressor is running, there is a certain amount of air in there for them to work, and they just can't drop by themselves, the buttons have to be pressed. From where Richardson was standing he could have reached both control buttons.

"It would be impossible for these pressers to malfunction."

To sustain his action for damages the burden of proof is on the claimant. He must prove by a preponderance of

the evidence that respondent's negligence was the cause of his injury and that he was free from contributory negligence. ***Moe*** vs. ***State, 23 C.C.R. 14.***

We have here only the testimony of two witnesses, which we believe to be of equal credibility, and whose statements on several material issues are in flat contradiction. In such circumstances, we are bound to the following rule which is well established in Illinois case law and cited in ***Bradley*** vs. ***State, 22 C.C.R. 41:***

"An affirmative statement by one witness, met by a flat categorical denial by another, of equal credibility, does not meet the elementary requirement of the law that a plaintiff must make out his or her case by a preponderance of the evidence."

Applying the above rule to the record before us, there remains unchallenged sufficient evidence to find that both the claimant and the respondent were negligent. **This, of** course, would require a denial of the claim on claimant's failure to prove that he was free from contributory negligence.

Respondent's negligence is based on Officer Billerbeck's admission that he saw the claimant walk over to the steam presser and, although he warned him that the machines were dangerous, he did not order claimant not to go over to the machines. We find this failure to enforce the penitentiary safety rules to be an act of negligent supervision.

On the other hand, the claimant has not proved by a preponderance of the evidence that he was in the exercise of due care and caution for his own safety. The evidence does not support claimant's contention that the presser malfunctioned and fell without being released by someone pushing the buttons.

Claimant urges us to conclude, under the doctrine of ***res ipsa loquitur,*** that the presser must have malfunctioned, citing the authority of ***Cobb*** vs. ***Marshall Field & Co.,***

(1959) *22 Ill.App.2d,* **143.** The facts here are clearly distinguishable from the ***Cobb*** case and the analogy is very remote. In ***Cobb,*** a passenger elevator fell to the basement, an obvious malfunction. The inference of negligence under ***res ipsa loquitur*** is especially strong in passenger-common carrier cases. Injured passengers in a case like ***Cobb*** are generally free from contributory negligence. Also, in such cases, the defective elevator or carrier is never used after the accident until it is repaired. In the case at bar, the steam presser was not even inspected after claimant's injury but continued in daily use and service for another year after this accident. Officer Billerbeck's unrefuted statement that it would be "impossible" for this presser to malfunction, as suggested by the claimant, further supports our conclusion on this point.

The presser had to be activated by an operator (Richardson) pressing the two buttons, or it would never have come down on claimant's hand. Now visualize what the operator, Richardson, must have done to press both buttons. Richardson had to lift both of his arms wide apart, if standing in his normal position in front of the machine, and stretch quite a distance if he were standing to one side as claimant said. Either way, if claimant had been exercising reasonable care for his own safety, he would have seen Richardson's movements and either removed his hands or called out for Richardson to stop.

Fortunately, claimant's painful burn left him with only a scar on his injured left hand, and he now enjoys full use of the hand. Having found that claimant did not prove he was free from contributory negligence, this claim must be denied.

This claim is denied.

(No. **5911—Claimants awarded $25,400.00.)**

ROBERT EVANS, BETTY EVANS and **LINDA EVANS, A** Minor, **by ROBERT EVANS,** Her Father and Next Friend, Claimants, *vs.* **STATE OF ILLINOIS,** Respondent.

***Opinion filed March 22,* 1973.**

JERRY B. LUCAS, Attorney for Claimants.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

HIGHWAYS—*contributory negligence.* **Contributory negligence** of **driver of auto which struck an abandoned truck on a highway precluded his recovery.**

HIGHWAYS—*passengers in automobiles.* **Contributory negligence of driver could not be imputed to passengers in automobile.**

HOLDERMAN, J.

This case involves three claims for personal injuries arising out of a collision between an automobile driven by Robert Evans and an abandoned truck parked on the highway at the end of a dead end road. The collision occurred at night on January **29,** 1970, on what used to be Route **45.**

The liability of the State is predicated on the failure of the State to cause the abandoned truck to be removed and its failure to warn claimant of the dead end of the road.

Claimant, Robert Evans, his wife, Betty Evans, and his daughter, Linda Evans, were all injured in the collision. Betty Evans, his wife, was seated in the front seat on the passenger side. His daughter, Linda Evans, was in the back seat of the motor vehicle being operated by Robert Evans. The accident happened at or near Chebanse, Illinois, at approximately **10** o'clock in the evening.

Claimant had proceeded through Chebanse and had made a right turn on **Oak** Street after coming to a stop before entering. He then proceeded north on Oak Street which was a dead end street. The dead end was

approximately six blocks north of the intersection at which claimant entered Oak Street. He was not familiar with Oak Street nor the dead end.

Oak Street was an undivided two lane street, 16½ feet wide with a deteriorating concrete pavement. Running immediately parallel with it on the western side were the tracks of the Illinois Central.

Approximately three blocks before the dead end there was a speed limit sign reading 35 miles per hour. On the northeast corner of Oak Street and George Street, two blocks south of the scene of the accident, there was a square white sign with black letters reading DEAD END. At the dead end itself, there was installed a three section guardrail extending across both traffic lanes. In the back of the guardrail was a 30 inch standard stop sign mounted in the center of what would have been a road bed had the road bed continued. Parked directly in front of the guardrail was an abandoned truck facing south. There was no illumination at the dead end. The truck had been there since the summer of 1969, some *six* months prior to the time of the collision. It was parked in such a fashion that it completely hid the guardrail and the stop sign behind it from the view of oncoming traffic.

The weather on the evening of the occurrence was clear, the visibility good, and the pavement was dry. As claimant turned on to Oak Street, there was a train on the tracks coming toward him and also a car coming toward him. He later met another oncoming car. He testified that as he proceeded north on Oak Street his speed was approximately 30-35 miles per hour. He testified that he did not see the dead end sign and claimed that there was a sign which notified him to resume speed. However, the evidence is clear that there was no such resume speed sign. A trooper who investigated the accident immediately after

it occurred, stated that he revisited the scene that evening to determine whether or not there was a resume speed sign, but found none. The claimant, Robert Evans, did not see the truck until he was approximately 50 feet or more from it. He then applied his brakes in an effort to avoid striking the truck but was unable to do so. The trooper investigating the accident measured skid marks of 68 feet; and basing his opinion on the length of the skid marks and the damage to claimant's vehicle, stated that claimant must have been traveling between 40 and 50 miles per hour.

While the State may have given adequate warning of the dead end, nevertheless, this Court is of the opinion that the State was negligent in permitting the truck to stand abandoned in the middle of the road for at least six months. On occasions prior to the collision, an inspection was made of the area by a highway traffic department employee in charge of sign repairs. He failed to take notice of the truck standing on the road way.

The question arises as to whether or not Mr. Evans was guilty of contributory negligence which was a proximate cause of the accident. He apparently was driving at a speed greater than permitted and he failed entirely to see the posted sign that would have given him warning that the street came to an end. He claims that his failure to see the sign was due to a truck with lights on being parked in front of it. His alertness, however, is questionable when he testified to an imaginary resume speed sign.

The Court feels that Robert Evans' conduct contributed at least in part to the collision which occurred, and, therefore, he is barred from recovering. He was at the edge of a town and if he was blinded by the lights of the train and oncoming traffic, then he should have either reduced his speed or become more alert in his driving. While the obstructions might tend to explain his failure to

see the signs, nevertheless, it doesn't entirely exonerate him.

However, his negligence is not imputed to his passengers, his wife and daughter. They conducted themselves in the ordinary manner of passengers and did nothing which could be held as being negligent on their own part.

Mrs. Evans had medical bills of approximately $3,400 plus $580 for nursing care, and $900 in lost earnings. A Dr. Lang testified that her condition was permanent and gave her a 35% disability of her left leg and a 25% disability to her right leg.

The disability of Mrs. Evans, according to the medical evidence, is severe on both her right and left leg, and it is our opinion that an award of $25,000 for damages sustained by her would be fair and just.

We believe that the award to Linda Evans should be in the amount of $400.00 as her injuries were of a comparatively minor nature.

(No. 5916—Claim denied.)

JAMES CASTLE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed March 22,* 1973.**

THOMAS SWEENEY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

LIMITATIONS—*contract.* **Complaint filed more than five years after cause of action accrued was properly subject to a motion to dismiss.**

BURKS, J.

This claim, filed September 3, 1970, is based on a written contract dated 10 years earlier (October 7, 1960) between the claimant and the Illinois Department of Public Works and Buildings. It was a contract for land clearing in

Marion County for a new state park north east of Salem with a manmade lake. Said agreement was identified as Contract No. **71321,** Lake Project, Omega Site. The claimant-contractor was to be paid, and apparently was paid, an agreed sum for clearing a specified number of acres. The work was to have been completed by August **1, 1961,** according to the written contract.

Now claimant contends that he should be paid an additional sum of **$6,450** which he says was authorized by a "change order" covering an additional **50** acres cleared at **$129** per acre.

An intensive examination of the record fails to show any change order signed by the respondent or by anyone other than the claimant himself.

Since respondent elected not to answer the complaint, a general traverse or denial of the facts as set forth in the complaint was considered as filed, pursuant to Rule 10 of this court. The issue being thus joined, it was incumbent upon the claimant to prove his claim by competent and admissible evidence. The record shows that he has failed to do so. We will comment on the only significant items of evidence on which this claim is based and on our reason for finding that, in any event, the claim is barred by the statute of limitation.

On August **4,1972,** respondent filed a motion to dismiss on the grounds that the complaint was not filed within 5 years after the cause of action first accrued as required by $22 of the Court of Claims Act in all cases arising out of contract. Respondent's motion appeared to be well taken since there was nothing but unsupported allegations in the record to indicate that the cause of action first accrued after September **3, 1965.** (The date September **3, 1965,** being exactly **5** years before this complaint was filed, is the date on which this action is barred by the statute unless claimant

proves that the cause of action first accrued after said date.)

Since the contract provides that payment for the work performed "shall be made within 30 days after completion," the exact or approximate date of completion becomes a very material fact in determining the issue before us. Yet, nowhere in the record do we find a completion date stated. This is a serious defect in claimant's pleadings. We think it can reasonably be inferred from the record that claimant must have completed all of his work by the end of 1962.

Claimant argued, in answering respondent's motion to dismiss, that his cause of action did not first accrue before September 3, 1965, since 'he was, at that time, still negotiating with the respondent on the matter of his claim for additional compensation, and that the statute of limitations should not run 'while such "transactions" were in progress. In his brief filed August 29, 1972, claimant cited several cases which the court considered somewhat relevant to claimant's contention but not to the facts in the record.

On its own motion, the court ordered oral argument, pursuant to Rule 20D, and the parties were heard by the full court on November 14, 1972. At the hearing claimant reaffirmed his previous statements and argument but did not contribute anything new to the existing record nor which would even tend to support his contention that negotiations or transactions concerning his claim were still in progress as late as September 3, 1965. Claimant suggested that he could and would undertake to submit some written statement or memorandum from the respondent to support his contention within 30 days. The court granted claimant's request for a 30 day continuance to produce such evidence.

On December 14, 1972, claimant filed a letter and

memorandum acknowledging that, after exhausting his efforts and research, he was unable to submit any further written or oral evidence from an agent or employee of the respondent that would tend to support his contention that transactions were in progress within 5 years prior to filing his claim, and nothing at all in writing concerning the alleged "change order." He referred us again to the documents and instruments previously filed.

Among the numerous documents and instruments previously filed, we find that the only instrument signed or written by the respondent was the original contract dated October 7, **1960.** This contract contained the following paragraph on page **3** which we believe is determinative of claimant's rights in this cause:

> ***"The final payment shall be made within thirty (30) days after the completion*** **in the manner, form and time required by this Contract, for the work included in this Contract,** ***but no payment whatever, or at any time, shall be demanded or due, except upon the written certificates of the said Architect,*** **to the effect that such payments have become due, and** ***such certificates shall in each instance be a condition precedent to the right to require payment,*** **and his decision thereon shall be final." (Emphasis added)**

There is no written certificate from any architect in the record. There is in the record, marked claimant's Exhibit A, a copy of what purports to be a telegram to the claimant from the respondent's architect which reads as follows:

> "CK PAID SPRINGFIELD, ILL 11 321 PM.
>
> JAMES CASTLE
> PAWNEE, ILLINOIS
>
> RE MARION COUNTY CONSERVATION LAKE. THIS IS TO INFORM YOU THAT THE LAST 2 REMAINING TRACTS OF LAND HAVE NOW BEEN ACQUIRED AND THERE IS NO FURTHER REASON FOR NOT PROCEEDING WITH THE CLEARING WORK AS ORIGINALLY

CONTRACTED YOURS TRULY
R D HENDERSON
ACTING SUPERVISORY ARCHITECT"

The telegram bears no date. The only date is in claimant's handwritten notation "Received January 11, 1962.

Claimant contends that the above unauthenticated telegram amounts to an extension of the completion time stated in the original contract. If so, it appears that this would bring the agreement within the ***Statute of Frauds (Ch. 59, Sec. I, Ill.Rev.Stat.)*** as "an agreement that is not performed within one year from the making thereof". Hence claimant's alleged "change order", written by claimant himself, on which he claims additional compensation, would be unenforceable since it is not signed by the respondent. This merely adds additional weight to the specific language of the contract, quoted above, forbidding any payment, at any time, except upon the written certificate of respondent's architect. Claimant could not furnish such a certificate.

Claimant also offered as evidence a state printed folder describing "Illinois State Parks and Memorials" which allegedly shows the area of the man-made lake in Steven A. Forbes Park to contain more acres than claimant was paid for clearing under the original contract. Obviously such evidence is not sufficient to prove that the state waived the provisions of its written contract requiring architect's certificate as a condition precedent to payment.

The written contract is not ambiguous nor uncertain. The court cannot place a construction on the contract which is contrary to, or different from, the plain and obvious meaning of the language used. ***Z.L.P. Contracts*** $216.

We find that claimant's cause of action, if any, accrued

when his work was completed; that completion must have been sometime in 1962; that he had 5 years after the completion in which to file his claim in this court for any unpaid compensation to which he believed he was legally entitled; that he did not file such action until 8 years or more after completion; that he failed to prove any facts that would toll the statute of limitation; but in no event could his claim for additional compensation be allowed without a certificate signed by respondent's architect as stated in the written contract.

Finally, although in this case it is now a moot question, we do not agree that the authorities cited by the claimant support his contention that a cause of action does not accrue so long as "negotiations" are continuing. If such a position were tenable, a statute of limitations might never commence to run, and a party against whom a claim is being made would have no incentive to discuss any part of the case with the opposing party for fear of tolling the statute of limitations.

The purpose of a statute of limitations is to avoid the situation which claimant now says he has encountered in the offices of the respondent. The file cannot be located, and no one has any recollection of his alleged claim. The need for such statutes is stated in *I.L.P. Limitations $2* as follows:

> "Statutes of limitation are designed to prevent fraudulent and stale claims from springing up after the lapse of great periods of time and surprising parties or their representatives when all proper evidence or vouchers have been lost, or the facts have become obscure by reason of such lapse of time or the defective memory, or the death or removat, of witnesses. They are designed to afford security from stale demands, when the true state of transactions may be incapable of explanation and the rights of the parties cannot be satisfactorily investigated."

For the above reasons, this claim must be and is hereby denied.

CLAIM DENIED.

(No. 6673—Case Dismissed.)

SOLOMON DAWSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 22, 1973.

JEROME KAPLAN and ARTHUR S. GOLD, Attorneys for Claimant.

WILLIAM J. Scorr, Attorney General, for Respondent.

PRISONERS AND INMATES—*wrongful detention.* **In order for a claimant to recover damages for wrongful incarceration he must prove that at the time he was imprisoned, he was innocent of the charge brought.**

SAME—**A subsequent reversal of a law under which a defendant was sentenced will not create a liability for a claim for wrongful imprisonment.**

HOLDERMAN, J.

This cause coming on to be heard on the motion of respondent to dismiss, and the Court being fully advised in the premises, FINDS:

That a Complaint was filed on behalf of Solomon Dawson on April 28, 1972.

Count I of said complaint sets forth the fact that the claimant was found guilty of possession of marijuana on January 11, 1966, and was sentenced to 7 to 20 years imprisonment. There is some discrepancy between the State's position and that of the claimant as to whether the offense was for the sale or possession of marijuana and also as to the length of time of the sentence.

The statute under which the claimant was convicted was found unconstitutional in the case of *People* vs. *McCabe*, 49 Ill. 2d 338 (1971) and on January 4, 1972, the claimant was released on a writ of habeas corpus and has brought this action.

Count I seeks to recover for wrongful imprisonment and asks damages in the amount of $30,000.00.

Count II of said complaint asks for an award of $25,000.00, alleging that while he was wrongfully

imprisoned, he was abused both mentally and physically, which resulted in both temporary and permanent injuries to the claimant.

The State filed a motion to dismiss both counts. The grounds for dismissal on Count I are that the claimant was found guilty of an illegal act at the time he was tried and the fact that the Supreme Court later found the statute under which he was convicted unconstitutional does not entitle him to a recovery.

The State seeks dismissal of Count II on the grounds that proper notice was not filed as required by Chap. **37,** Sec. **439.22-1,** Ill.Rev.Stat., and sets forth that some of the acts of abuse were allegedly committed as long as fifty-one months before any effort to notify the State was made.

This cause was argued orally before the Court of Claims with counsel for both sides presenting their arguments in an unusually competent manner.

The claimant's theory is that the law under which Solomon Dawson was convicted having been found unconstitutional, he was consequently never guilty of a crime and, therefore, should automatically be entitled to compensation for unlawful imprisonment. They assert that said decision is retroactive to the time of conviction and presented a fine Brief in support of their contention.

The State takes the position that "all claims against the State for time unjustly served in prisons in this State where the persons in prison prove they are innocent of the crime for which they were imprisoned" are the only cases in which compensation can be awarded.

This Court in the past has always taken the position that a claimant, to recover under the statute in which this proceeding was filed, must prove that the time he served in prison was unjust and that he was innocent of the crime for

which he was imprisoned. *Jonnia Dirkans* vs. ***State*** *of* ***Illinois,*** **25** C.C.R., **343.**

The Illinois Legislature in **1971,** which was six years subsequent to the defendant's conviction and before the McCabe decision, enacted the Cannabis Control Act, **H.B. 788.** This statute's effective date was August **16, 1971.** It provided for a substantially reduced penalty for the possession and sale of marijuana.

Section **18** of that Act also provides:

"Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted would be a violation of this Act, and has not reached the sentencing stage or a final adjudication, then for the purposes of penalty, the penalties under this Act apply if they are less than under the prior law upon which prosecution was commenced."

The theory of retroactivity advanced by the claimant would open up an entirely new concept where the unconstitutionality of statutes is involved. The potentialities of such a theory are multifold.

This theory, followed to its logical conclusion, would allow every individual who had been convicted of a crime under a statute later ruled unconstitutional by the Supreme Court to sustain an action for recovery of damages from the State for illegal incarceration.

Included in this list could be estates of individuals who were executed while the death penalty was still the law of the State, to those convicted under obscenity laws, abortion laws, pornographic laws, local option laws, and a multitude of other criminal statutes that have been changed.

Every change in the penalty provision, such as in the present case, would also allow recovery by the individual. This would result in a flood of claims brought about by any change in punishment either by action of the Legislature or by the Courts, a change in personnel in the Courts, or a change in the mores of society.

The victims under this theory would not be the alleged criminals but society and the individual taxpayers who would have to assume this new and additional burden.

To advance this theory one step further, if the State and society have a responsibility to the freed individual because of a change in penalty under the laws or the finding of the laws to be unconstitutional, then does not the following automatically take place—if, by a motion for re-hearing or at a subsequent date, another Supreme Court ruling reverses the finding of the unconstitutionality of the statute in question and restores the penalty, do not the following events logically follow:

1. The person who was liberated under the finding of unconstitutionality be compelled to return to the penal institution to serve out the balance of his sentence, and;

2. The person who has secured an award or **payment for illegal incarceration as a result** of **the first finding on unconstitutionality have to return, with interest, the amount received.**

If the theory **of** retroactivity is to be applied for the benefit of the accused, it would seem necessarily to follow that the State and the individual members of society, the taxpayers, would be entitled to the same measure of protection.

This Court has consistently held that for a former prisoner to recover for illegal imprisonment, the applicant must prove he was innocent of the fact of the crime and that he was illegally incarcerated.

It is well to note here that in the McCabe decision, the guilt or innocence of the individual before the bar was not discussed, and the same situation applies in the present case. There **is** not any denial of the fact of the crime for which the applicant was originally convicted and for which he was sentenced, nor is there any question but that the law under which he was sentenced was valid at the time of his trial.

Findings of the Court in such matters as the present one are clearly set forth in the case of ***Munroe*** vs. State, **25** C.C.R. **286, 290,** which says:

"It is the belief of this Court that the legislature intended only to provide a manner of recourse in the Court of Claims with the amount of recovery specified, for those who have been imprisoned for an act which they did not commit. The legislature did not intend to establish a means of recourse for an individual who in fact, committed a criminal act but an act for which he could not be held criminally responsible."

This principle is reaffirmed in Volume **25**, Page **343** which is the case of Jonnia Dirkans where the Court again stated that before an award can be made for wrongful incarceration "claimant must prove by a preponderance of the evidence **(1)** that the time served in prison was unjust, (2) that the act for which he was wrongfully imprisoned was not committed, and **(3)** the amount of damages to which he is entitled."

The Courts have held that a statute found unconstitutional is an operative fact at least until it is declared invalid. ***Chicot County*** vs. ***Baxter State Bunk, 308*** **U.S. 371 (1939).**

It is the opinion of this Court that the claimant has not produced the proof required to enable him to recover under the statute involved. He has not established his innocence of the fact of the crime for which he was convicted nor has he proved that his incarceration was illegal.

In Count 11, which was for damages sustained by the claimant while incarcerated, the State moved to dismiss because the notice was not filed within the required six month period.

The State, as further grounds for dismissal, stated that the notice was vague and ambiguous.

The claimant's notice did not contain any information concerning the specific dates or years **as** to his alleged

injuries, and as to the place and location, it merely referred to two different penitentiaries.

The claimant in response to the arguments of the respondent stated that under the circumstances the notice he gave was sufficient. He cited cases dealing with notice and requirements by a minor and particularly the case of ***Robert*** vs. ***State,*** **24 I.C.C.R.,** Page 120 **(1961)** which holds that a minor is relieved from the requirement of giving notice within the time specified.

The claimant's theory is that a convict who is incarcerated is in the same position as a minor or one who is mentally incompetent and that it would be impossible for him to file a notice and therefore should be given the same protection as either a minor or incompetent.

The objection by the State that the degree of specificity is insufficient as to places within the two penitentiaries is not necessary.

As to the dates, the claimant's argument is that his notice is sufficient because the abuse to which he was subjected occurred throughout the entire period of time he was incarcerated.

There is not any law cited by the claimant to sustain his proposition that individuals who are incarcerated are entitled to the same protection as regards notice as is given to minors and incompetents.

It is a fact that individuals who are incarcerated are not deprived of their legal remedies.

This case itself is a specific example because the claimant had filed on his behalf a Writ of Habeas Corpus while he was still incarcerated. Access to the Courts' legal procedures are constantly being used by inmates of various institutions and, therefore, we do not believe this argument is sufficient to overturn the laws already established as to

requirements for notice and also as to the details as to the time and place of the incidents on which this claim is based.

The respondent's motion for dismissal of Count I and Count II is hereby granted and said cause is hereby dismissed.

(No. 6729—Claimant awarded $11,757.69.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 22, **1973.**

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6765—Claimant awarded $132.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion *filed* March 22, **1973.**

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6776—Claimant awarded $2,091.00.)

STANDARD OIL, DIVISION OF THE AMERICAN OIL COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed March 22, **1973.**

STANDARD OIL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6862–Claimant awarded $153.00.)

SHIRLEY H. PENICK FOR ST. MARY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed March 22, **1973.**

SHIRLEY H. PENICK FOR ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 6919—Claimant awarded $241.19.)

SMITH On, **CORPORATION,** Claimant, *vs.* **STATE** OF **ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed March 22, **1973.**

SMITH OIL CORPORATION,Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6923–Claimant awarded $1,210.00.)

SUBURBAN TRANSIT SYSTEM, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 22, **1973.**

SUBURBAN TRANSIT SYSTEM, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7063—Claimant awarded $1,418.60.)

MAYFAIR SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 22, **1973.**

MAYFAIR SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7067—Claimant awarded $468.00.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed March 22, **1973.**

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—%Claimant awarded $47.00.)

AERO AMBULANCE SERVICE, INC. Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April *11,* **1973.**

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriution. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—27—Claimant awarded $867.75.)

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, An Illinois Not-For-Profit Corporation, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed April *11,* **1973.**

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—&Claimant awarded $47.86.)

FEHRENBACK CHEVROLET, INC., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed April 11, 1973.

FEHRENBACK CHEVROLET, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—39—Claimant awarded $72.00.)

MARGARET A. MCGRATH, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 11, 1973.

MARGARET A. MCGRATH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—62—Claimant awarded $892.50.)

BLACK AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed April 11, 1973.

BLACK AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—70—Claimant awarded $2,490.40.)

RALPH CARSON COMPANY, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April *11, 1973.*

RALPH CARSON COMPANY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E.** WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—117—Claimant awarded $3,264.89.)

SCIENTIFIC PRODUCTS, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April *11, 1973.*

SCIENTIFIC PRODUCTS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73–CC—118—Claimant awarded $565.79.)

FISHER CONTROLS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April ***11, 1973.***

FISHER CONTROLS COMPANY, Claimant, pro se.

WILLIAM J. Scorr, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation, When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73–CC—120—Claimant awarded $109.00.)

THE FLORENCE CRITTENTON PEORIA HOME, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April ***11, 1973.***

WESTERVELT, JOHNSON, NICOLL AND KELLER, Attorney for Claimant.

WILLIAM J. Scorr, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—125—Claimant awarded $158.06.)

SUN On. COMPANY OF PENNSYLVANIA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed April ***11, 1973.***

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—134—Claimant awarded $23.00.)

PASSAVANT MEMORIAL AREA HOSPITAL ASSOCIATION, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April ***11,*** 1973.

PASSAVANT MEMORIAL AREA HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—141—Claimant awarded $201.45.)

ARTHUR WHITE, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 11, 1973.

ARTHUR WHITE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 73—CC—148—Claimant awarded $522.00.)

RICHARD W. HINDS, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed April 11, 1973.

RICHARD W. HINDS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—149—Claimant awarded $522.00.)

CLARENCE O. SCOTT, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 11, 1973.

CLARENCE O. SCOTT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—150—Claimant awarded **$522.00.**)

RICHARD R. DOYLE, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 11, 1973.

RICHARD R. DOYLE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6268—Claimant awarded $2,006.71.)

DOMINIC ROSCETTI, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April *11, 1973.*

DOMINIC ROSCETTI, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 65.32—Claimant awarded $637.71.)

YMCA HOTEL OF CHICAGO, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April *11, 1973.*

YMCA HOTEL OF CHICAGO, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6807—Claimant awarded $67.99.)

SEARS, ROEBUCK AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April *11, 1973.*

ROBERT F. VESPA, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6935—Claimant awarded $3,691.38.)

NATIONAL CASH REGISTER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April 11, 1973.

NATIONAL CASH REGISTER COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6975—Claimant awarded $1,532.53.)

TEXACO, INC., Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April 11, 1973.

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7042—Claimant awarded $48.57.)

MOTIVE PARTS COMPANY OF AMERICA, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 11, 1973.

MOTIVE PARTS COMPANY OF AMERICA, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7081—Claimant awarded $135.00.)

FRANK LEAVITT, Ph.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April *11, 1973.*

FRANK LEAVITT, Ph.D., Claimant, pro se.

WILLIAM J. Scorr, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7093—Claimant awarded $1,390.00.)

DR. GENE J. SBALCHIERO, D.D.S., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 11, *1973.*

DR. GENE J. SBALCHIERO, D.D.S., Claimant, pro *se.*

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—9—Claimant awarded $195.20.)

POLAROID **CORPORATION, Claimant,** *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.**

Opinion filed April **16,1973.**

POLAROID CORPORATION, Claimant, pro se.

WILLIAM J. Scorr, **Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73–CC—18—Claimant awarded $10.00.)

JOSEPH **CATEN,** M.D., **Claimant,** *vs.* **STATE OF ILLINOIS, DEPARTMENT OF** MENTAL **HEALTH, Respondent.**

Opinion filed April **16, 1973.**

DR. JOSEPH CATEN, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73–CC—21—Claimant awarded $14.90.)

TEXACO, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.**

Opinion filed April **16, 1973.**

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—32—Claimant awarded $35.10.)

FEHRENBACH CHEVROLET, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed April 16, 1973.

FEHRENBACH CHEVROLET, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—35—Claimant awarded $16.29.)

INFORMATION DESIGN, INC., Claimant, *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed April 16, 1973

INFORMATION DESIGN, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—53—Claimant awarded $1,382.40.)

COVENANT CHILDRENS HOME, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed April 16, 1973.

COVENANT CHILDRENS HOME, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—61—Claimant awarded $450.00.)

S & H REALTY & INVESTMENT CO., INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 16, 1973.

S & H REALTY INVESTMENT *Co.*, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—80—Claimant awarded $84.00.)

LUDMILA SIKSNA, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 16, 1973.

JAMES L. DOLAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—&Claimant awarded $370.00.)

PARADYNE CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS, DIVISION OF TELECOMMUNICATIONS,** Respondent.

Opinion *filed* April ***16, 1973.***

PARADYNE **CORPORATION,** Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73—CC—89—Claimant awarded $3,202.50.)

RODI-CHRIS CRAFT, **INC.,** Claimant, *vs.* **STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY,** Respondent.

Opinion filed April ***16, 1973.***

RODI-CHRIS CRAFT, **INC.,** Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—&Claimant awarded $3,470.00.)

BROWNE-MORSE COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF *MENTAL* HEALTH,** Respondent.

Opinion filed April ***16,1973.***

BROWNE-MORSE COMPANY, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—%Claimant awarded $294.00.)

DR. DAVID J. KASS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April *16, 1973.*

DR. DAVID J. KASS, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—110—Claimant awarded $3,558.65.)

METRO REPORTING SERVICE, Claimant, vs. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinwn filed April *16, 1973.*

METRO REPORTING SERVICE, Claimant, pro *se.*

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—119—Claimant awarded $9.90.)

ADVANCE PRODUCTS COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April *16, 1973.*

DANIEL I. DOLLINGER, ADVANCE PRODUCTS COMPANY, Claimant, pro se.

WILLIAM J. SCORN, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation, When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—126—Claimant awarded $34.65.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed April 16, 1973.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—127—Claimant awarded $11.59.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed April 16, 1973.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—132—Claimant awarded $250.00.)

SINGER BUSINESS MACHINES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April **16, 1973.**

SINGER BUSINESS MACHINES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73—CC—136—Claimant awarded $417.55.)

SOUTH SIDE CONTROL SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 16, **1973.**

SOUTH SIDE CONTROL SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 6147—Claimant awarded $25,000.00.)

WILLIAM A. **RANDOLPH,** INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, **1973.**

JENNER & BLOCK, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

STIPULATION—*settlement*. **Where parties settle the matter upon the recommendation and concurrence of the commissioner, an award will be entered accordingly.**

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the recommendation of Commissioner Joseph P. Griffin, and the Court being fully advised in the premises;

THIS COURT FINDS that this claim arises out of a construction contract dated on or about May **27,1966.** The instant claim is for temporary steel sheet piling erected by the claimant as an incident to the contract between the claimant and the Department of Transportation, Division of Highways. On December **14,1972,** at a hearing presided over by Commissioner Joseph P. Griffin, the parties answered ready for trial and at that time stipulated as to certain facts and made opening statements. Upon conclusion thereof the Commissioner recommended, and the parties agreed that the claimant was entitled to partial compensation for work performed. The parties agreed to settle the matter upon the recommendation and concurrence of the Commissioner.

IT IS HEREBY ORDERED that the sum of $25,000.00 (TWENTY-FIVE THOUSAND DOLLARS) be awarded to claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

IT IS FURTHER ORDERED that the Department of Transportation pay out the retainage held by them in the normal and ordinary course of business.

(No. 6489—Claimant awarded $672.00.)

NILE MARRIOTT, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April *16, 1973.*

NILE MARRIOTT, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6909—Claimant awarded $67.82.)

BERNARD C. FINLEY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April *16,* 1973.

BERNARD C. FINLN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7014—Claimant awarded $270.86.)

SEARS, ROEBUCK AND COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 16, *1973.*

ROBERT VESPA, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7027—Claimant awarded $2,033.00.)

MICHAEL REESE HOSPITAL, A Corporation, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 16, 1973.

M. C. ELDEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7066—Claimant awarded $558.00.)

ILLINOIS CENTRAL GULF RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 16, 1973.

ILLINOIS CENTRAL GULF RAILROAD COMPANY, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for ,Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7084—Claimant awarded $122.60.)

E. A. COOK, Claimant, os. STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD, Respondent.

Opinion filed *April 16, 1973.*

E. A. COOK, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7087—Claimant awarded $36.00.)

DOCTORS MEMORIAL HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *April* 16, 1973.

DOCTORS MEMORIAL HOSPITAL, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7094—Claimant awarded $208.74.)

KEY EQUIPMENT AND SUPPLY COMPANY, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 16, 1973.

KEY EQUIPMENT AND SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-15—Claimant awarded $40.00.)

R. CARREIRA, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 26, 1973.

DR. R. CARREIRA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-29—Claimant awarded $3,828.76.)

LT. JOSEPH P. KENNEDY, JR., SCHOOL FOR EXCEPTIONAL CHILDREN, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 26, *1973.*

LT. JOSEPH P. KENNEDY, JR., SCHOOL FOR EXCEPTIONAL CHILDREN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-58—Claimant awarded $34.00.)

G. **PIERRE-JEROME, M.D.,** Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 26, 1973.

G. PIERRE-JEROME, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-78—Claimant awarded $1,126.95.)

XEROX CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed April 26, **1973.**

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-82—Claimant awarded $680.00.)

ILLINOIS CENTRAL GULF RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 26, **1973.**

ILLINOIS CENTRAL GULF RAILROAD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-83—Claimant awarded $50.00.)

LAKEVIEW ANESTHESIA ASSOCIATES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 26, **1973.**

LAKEVIEW ANESTHESIA ASSOCIATES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-116—Claimant awarded $126.00.)

MICHAEL J. SCHNEIDER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 26, 1973.

MICHAEL J. SCHNEIDER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-144—Claimant awarded $405.00.)

NORWOOD MEDICAL CENTER, S.C., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 26, 1973.

NORWOOD MEDICAL CENTER, S.C., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-164—Claimant awarded $987.74.)

FISHER SCIENTIFIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed April 26, **1973.**

FISHER SCIENTIFIC COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-175—Claimant awarded $225.00.)

XEROX CORPORATION, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 26, **1973.**

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6861—Claimant awarded $338.00.)

BOOTH MEMORIAL HOSPITAL, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 26, **1973.**

BOOTH MEMORIAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6962–Claimant awarded $2,745.88.)

JUDICIAL INQUIRY BOARD, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.

Opinion filed April **26, 1973.**

RAY F. BREEN, JUDICIAL INQUIRY BOARD, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-37—Claimant awarded $175.00.)

UNIVERSITY OF **EVANSVILLE,** Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April **27, 1973.**

UNIVERSITY **OF** EVANSVILLE, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73-CC-104—Claimant awarded $211.15.)

UNION COUNTY HOSPITAL DISTRICT, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April **27, 1973.**

UNION COUNTY HOSPITAL DISTRICT, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-109—Claimant awarded $585.00.)

ESTATE OF SAMUEL YAKSIC, Claimant, vs. STATE OF ILLINOIS, INDUSTRIAL COMMISSION, Respondent.

Opinion filed April *27, 1973.*

MRS. JULIA BEDESELICH YAKSIC, for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-115—Claimant awarded $185.00.)

CONDELL MEMORIAL HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April *27, 1973.*

CONDELL MEMORIAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-121—Claimant awarded $28.80.)

A. ZOLA GROVES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April *27, 1973.*

A. ZOLA GROVES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-131—Claimant awarded $43.00.)

CAPITOL AMBULANCE & OXYGEN SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April *27, 1973.*

CAPITOL AMBULANCE & OXYGEN SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-139—Claimant awarded $103.23.)

SUBURBAN DOOR CHECK & LOCK, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April *27,* 1973.

SUBURBAN DOOR CHECK & LOCK SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-163—Claimant awarded $45.00.)

AERO AMBULANCE SERVICE, INC., Claimant, **vs. STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April **27, 1973.**

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73-CC-169—Claimant awarded $1,135.38.)

ROOT BROTHERS MANUFACTURING AND SUPPLY COMPANY, Claimant, **vs. STATE** OF **ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed April **27, 1973.**

KORSHAK, ROTHMAN, **OPPENHEIM AND FINNEGAN,** Attorney for Claimant.

WILLIAM J. **SCOTT,** Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-171—Claimant awarded $87.04.)

NANCY MOSES, Claimant, **vs. STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April **27, 1973.**

NANCY MOSES, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-172—Claimant awarded $462.22.)

NEW **ERA** DAIRY, **DIVISION OF PRAIRIE FARMS DAIRY, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.**

Opinion filed April 27, 1973.

TWOMEY AND HINES, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73-CC-186—Claimant awarded $640.14.)

MORTON SALT COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, **Respondent.**

Opinion filed April 27, 1973.

MORTON SALT COMPANY, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6567—Claimant awarded $616.25.)

DE **KALB PUBLIC HOSPITAL, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL** HEALTH, **Respondent.**

Opinion filed April **27,1973**

DE KALB PUBLIC HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6759—Claimant awarded $115.00.)

LINCOLN MERCHANDISING COMPANY—FURNITURE, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April **27, 1973.**

LINCOLN MERCHANDISING COMPANY—FURNITURE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 6798—Claimant awarded $11,556.50.)

ANGEL GUARDIAN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April **27, 1973.**

ANGEL GUARDIAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6885–Claimant awarded $10.00.)

MASON-BARRON LABORATORIES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1973.

MASON-BARRON LABORATORIES, INC., Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7032—Claimant awarded $285.00.)

SMITH OIL COMPANY, Claimant, ***us.*** STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 27, 1973.

SMITH On. COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* ***appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-10—Claimant awarded $8,272.68.)

COOK COUNTY STATE'S ATTORNEY'S OFFICE, Claimant, ***us.*** STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.

Opinion filed May 3, 1973.

COOK COUNTY STATE'S ATTORNEY'S OFFICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-11—Claimant awarded $1,595.31.)

E. R. SQUIBB AND SONS, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 3, **1973.**

E. R. SQUIBB AND SONS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriution. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-59—Claimant awarded $474.10.)

SARGENT-WELCH SCIENTIFIC Co., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF ENVIRONMENTAL PROTECTION, Respondent.

Opinion filed May **3, 1973.**

SARGENT-WELCH SCIENTIFIC Co., Claimant, pro se.

WILLIAM J. **Scorn,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-100—Claimant awarded $220.00.)

COLUMBIA COLLEGE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May **3, 1973.**

COLUMBIA COLLEGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-170—Claimant awarded $967.40.)

UNICARE HEALTH FACILITIES, INC., d/b/a NORTH AURORA CENTER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 3, 1973.

UNICARE HEALTH FACILITIES, INC., d/b/a NORTH AURORA CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-197—Claimant awarded $1,164.80.)

CHARLES McCORKLE, JR., (Court Reporters), Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed May 3, 1973.

CHARLES McCORKLE, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6471—Claimant awarded $284.48.)

MERCK, SHARP AND DOHME, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May *3, 1973.*

MERCK, SHARP AND DOHME, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6664—Claimant awarded $40.00.)

JOHN E. REID AND ASSOCIATES, Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed May 3, *1973.*

JOHN E. REID AND ASSOCIATES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6930—Claimant awarded $20.00.)

RENDEL'S, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed May *3, 1973.*

RENDEL'S, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6932—Claimant awarded $25.00.)

RENDEL'S, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed May 3, 1973.

RENDEL'S, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7002—Claimant awarded $200.00.)

WALTER C. McCRONE ASSOCIATES, INC., Claimant, *vs.* STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion filed May 3, 1973.

WALTER C. McCRONE ASSOCIATES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7073—Claimant awarded $246.15.)

RIVEREDGE HOSPITAL, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 3, 1973.

RIVEREDGE HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7085—Claimant awarded $32.00.)

OCHS ELECTRIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed May 3, 1973.

OCHS ELECTRIC Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-36—Claimant awarded $533.00.)

ILLINOIS CHILDREN'S HOME AND AID SOCIETY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 8, 1973.

KIRKLAND AND ELLIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-44 thru 73-CC-51—Consolidated)
(Claimant awarded $12,831.66.)

VISI FLASH RENTALS, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed May 8, *1973.*

VISI FLASH RENTALS, INC., Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-97—Claimant awarded $75.81.)

GLOBE GLASS & TRIM COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed May *8, 1973.*

COHON, RAIZES & REGAL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-123—Claimant awarded $64.90.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed May 8, *1973.*

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER AND DOUGLAS G. OLSON, Assistant Attorneys General, for Respondent.

Cowrum—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-128—Claimant awarded $9.12.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed May 8, 1973.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

Cowrum—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-143—Claimant awarded $919.40.)

THE JEWISH HOSPITAL OF ST. LOUIS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 8, 1973.

THE JEWISH HOSPITAL OF ST. LOUIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-151—Claimant awarded $1,390.95.)

MARSTERS SIGN COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed May 8, 1973.

MARSTERS SIGN COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-152—Claimant awarded $1,820.62.)

WHALEN WOODS VANCIL, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 8, 1973.

PHILIP SCHICKEDANZ, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-156—Claimant awarded $535.81.)

BOARD OF TRUSTEES OF THE STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, ON BEHALF OF THE PARTICIPANTS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 8, 1973.

BOARD OF TRUSTEES OF THE STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, ON BEHALF OF THE PARTICIPANTS, Claimant, pro se.

WILLIAM J. Scon, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-166—Claimant awarded $148.50.)

MEMORIAL HOSPITAL OF SPRINGFIELD, ILLINOIS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 8, 1973.

LONDRIGAN & POTTER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-209—Claimant awarded $189.00.)

HELEN M. GREGORY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 8, 1973.

HELEN M. GREGORY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-237—Claimant awarded $649.01.)

THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 8, 1973.

JOHN W. COSTELLO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6228-Claimant awarded $578.00.)

ROUSE BRUEGGEMAN LUMBER COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 8, *1973.*

LEWIS, BLICKMAN, GARRISON AND TUCKER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6833—Claimant awarded $145.00.)

RICHARD D. CORLN, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 8, *1973.*

DR. RICHARD D. CORLEY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6908—Claimant awarded $128.18.)

THOMAS A. ROSE, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed May 8, 1973.

THOMAS A. ROSE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6931—Claimant awarded $30.00.)

RENDEL'S, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed May 8, 1973.

RENDEL'S, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6999—Claimant awarded $5,682.53.)

KLINGBERG SCHOOLS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 8, 1973.

KLINCBERC SCHOOLS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the

amount due claimant.

PER CURIAM.

(No. 70%—Claimant awarded $8.00.)

MASON-BARRON LABORATORIES, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

***Opinion filed May 8,* 1973.**

MASON-BARRON LABORATORIES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-135—Claimant awarded $1,148.00.)

GENERAL ELECTRIC COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

***Opinion filed May* 17, 1973.**

M. W. HOOVER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

Cornam— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-185—Claimant awarded $836.35.)

LAWYERS CO-OPERATIVE PUBLISHING COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE,** Respondent.

***Opinion filed May* 17, 1973.**

LAWYERS CO-OPERATIVE PUBLISHING CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-252—Claimant awarded $125.00.)

ROCK **ISLAND FRANCISCAN HOSPITAL,** Claimant, ***us.*** **STATE** OF **ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed ***May 17,*** 1973.

ROCK ISLAND FRANCISCAN HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-12—Claimant awarded $212.40.)

JUBAL W. **McKEE**, Claimant, ***us.*** **STATE** OF **ILLINOIS,** Respondent.

Opinion filed ***May 24,*** 1973.

JUERGENSMEYER & ZIMMERMAN, Attorney for Claimant.

WILLIAM J. **Scorn,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*salary* deductions. Where claimant alleged that excessive deductions were withdrawn from his payroll checks for health insurance benefits, and respondent admits its error and agrees that the claim is justified, an award will be allowed.

BURKS, J.

This matter is now before the court on claimant's motion, filed April 27,1973, for judgment on the pleadings.

Respondent has filed no objections to said motion and has, in fact, acknowledged that this is a justifiable claim for the stated amount by filing a letter dated February 16, 1973, from Joseph S. Coughlin, Acting Director of the Department of Corrections, stating that all of the allegations in the complaint are true to the best of his and that department's knowledge and belief. The file contains other supporting documents.

In granting claimant's motion, it is necessary to restate the facts on which this award is based, as required by §18 of the Court of Claims Act.

Complaint was filed herein on January 8, 1973, by Jubal W. McKee for payment of excessive deductions withdrawn from his payroll checks by the Department of Corrections for Blue Cross and Blue Shield Health Insurance benefits.

From November 1, 1970, through and including July 31,1971, Jubal W. McKee was employed at the Valley View Boys' School, Valley View, Illinois, by the State of Illinois, Department of Corrections. During the above specified period, claimant was covered under a group Blue Cross and Blue Shield Health Insurance program, Insurance Certificate No. 22852-40200.

Premiums on the above specified insurance policy were paid in part by the claimant, and were effectuated by bi-monthly deductions from his payroll check.

The above specified deductions from claimant's bi-monthly check were made in accordance with and were equal to the amount established for family rates which would provide protection for an entire family. In fact, claimant was single during the entire above specified time, and the deductions which should have been made, should have been calculated on the basis of individual rates which would provide individual coverage.

As a result of the above miscalculations, excessive deductions were made during the entire period of time from November **1, 1970,** through and including July **31, 1971,** and claimant has suffereda loss thereby in the amount of Two Hundred Twelve and 40/100ths **($212.40)** Dollars.

The Department of Corrections, after discussing the matter with its chief personnel officer, its legal advisor and others, concluded that this was a payroll error for which the department was responsible.

There being no issue of law or fact before us, we conclude that claimant is entitled to an award for the amount claimed.

Claimant, Jubal W. McKee, is hereby granted **an** award in the amount of **$212.40.**

(No. **73-CC-1—Claimant awarded $468.00.)**

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed May 25, 1973.

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. **73-CC-71—Claimant awarded $1,376.00.)**

MISSOURI TECHNICAL SCHOOL, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 25, 1973.

MISSOURI TECHNICAL SCHOOL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-87—Claimant awarded $1,386.32.)

MATHESON SCIENTIFIC DIVISION OF WILL ROSS, INC., Claimant, vs. STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed *May* 25, 1973.

MATHESON SCIENTIFIC DIVISION OF WILL ROSS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-108—Claimant awarded $1,070.32.)

KENNETH E. WHEELER, ET AL., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed May 25, 1973.

HENRY W. GAUWITZ, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-212—Claimant awarded $655.20.)

AMERICAN HOSPITAL SUPPLY, Division of American Hospital Supply Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 25, 1973.

AMERICAN HOSPITAL SUPPLY, Division of American Hospital Supply Corporation, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-267—Claimant awarded $656.02.)

J. WM. BRENNAN, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed May 25, 1973.

J. WILLIAM BRENNAN, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-325—Claimant awarded $80.00.)

THERESA CHIUMIENTO, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 25, 1973.

THERESA CHIUMIENTO, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6328—Claimant awarded $403.20.)

MOORE BUSINESS FORMS, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF REVENUE**, Respondent.

Opinion filed May 25, **1973.**

MOORE BUSINESS FORMS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the **amount** due **claimant.**

PER CURIAM.

(No. 6752–Claimant awarded $66.00.)

MARCUS L. KOGAN, D.P.M., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AM**, Respondent.

Opinion filed May 25, **1973.**

DR. MARCUS L. KOGAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6837—Claimant awarded $29.50.)

FAVOR RUHL COMPANY/MICHAEL'S, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION**, Respondent.

Opinion filed May 25, **1973.**

FAVOR RUHL COMPANY/MICHAEL'S, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7083–Claimant awarded $85.50.)

W. T. GRANT COMPANY, Store No. 1106, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed *May 25, 1973.*

W. T. GRANT COMPANY, Store No. 1106, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-&Claimant awarded $902.50.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, *vs.* STATE OF ILLINOIS, ECONOMIC AND FISCAL COMMISSION, Respondent.

Opinion filed June 7, 1973.

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-43—Claimant awarded $3,995.00.)

CALLAGHAN AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 7, 1973.

RIORDAN, MALONE AND KELLY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-72—Claimant awarded $104.79.)

THE HUB CLOTHIERS, INC., Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 7, 1973.

THE HUB CLOTHIERS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-96—Claimant awarded $439.97.)

XEROX CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Optnion filed June 7, 1973.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-168—Claimant awarded $671.75.)

SILVER CROSS HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 7, 1973.

SILVER CROSS HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-181—Claimant awarded $700.30.)

ST. THERESE HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 7, 1973.

ST. THERESE HOSPITAL, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for **Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-201—Claimant awarded $613.03.)

LITTLE COMPANY OF MARY HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 7, 1973.

LITTLE COMPANY OF MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-235—Claimant awarded $42.80.)

CARL S. BROWN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 7, **1973.**

***CARL* S. BROWN, Claimant, pro se.**

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-%Claimant awarded $172.00.)

EMMA LEE WATSON, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 7, **1973.**

EMMA LEE WATSON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-270—Claimant awarded $178.50.)

S. S. WHITE, DIVISION OF PENNWALT CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed lune 7, 1973.

S. S. WHITE, DIVISION OF PENNWALT CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-278—Claimant awarded $6,580.00.)

BLACK OFFICE EQUIPMENT, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 7, 1973.

BLACK OFFICE EQUIPMENT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-298—Claimant awarded $900.00.)

GORDON F. MOORE, M.D., Claimant, *vs.* STATE OF ILLINOIS, JUDICIAL INQUIRY BOARD, Respondent.

Opinion filed June 7, 1973.

ROY F. BREEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropridion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-299—Claimant awarded $8,091.15.)

CITY OF **PEORIA,** Claimant, ***vs.*** **STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed June 7, 1973.

CITY OF PEORIA, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-323—Claimant awarded $272.48.)

WILLIE E. **MOORE, SR.,** Claimant, ***vs.*** **STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed June 7, 1973.

WILLIE E. MOORE, SR., Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5125—Claim denied.)

LAURA A. HAYS, ADMINISTRATRIX of the **ESTATE** OF **EARL PAUL HAYS,** Deceased, Claimant, ***vs.*** **STATE** OF **ILLINOIS,** Respondent.

Opinion filed June 7, 1973.

APOIAN AND ROSS, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

HIGHWAYS—*negligence,* **warning** *devices.* Where claimant failed to slow down after he should have seen warning lights, claimant failed to prove freedom from contributory negligence.

PERLIN, C.J.

Claimant seeks recovery of the sum of $25,000.00 plus costs for the death of decedent on November 11,1961, in an automobile accident on Route 16 about one-fourth mile east of Hardin, Illinois. Decedent was killed as a result of colliding with a crane being used by respondent for road repairs.

Claimant charges that respondent was negligent in carrying out repairs on Route 16 in that it left a crane and erected barricades on a paved portion of Route 16; that it failed to erect adequate warning signs that the roadway was barricaded; that it failed to have sufficient lights on the warning **signs;** that it failed to place adequate lights and signs east of said barricades so as to warn approaching motorists of the detour, that it parked the crane on the travelled portion of the pavement; and that it failed to erect warning lights or signals on the crane so as to warn approaching motorists of its presence.

Three eyewitnesses testified in the proceeding: Gary Howland, the driver of an eastbound car, and his passengers, Lindell Brangenburg and Ervin Overjohn.

Howland testified that the accident occurred about 9:00 p.m. Howland was driving a truck eastbound on Route 16 when he came to a barricade and pulled off on the shoulder to go around it. He saw Mr. Hays' car coming from the opposite direction and saw a crane on the highway in the westbound lane. There was a one lane detour for both eastbound and westbound traffic. The Hays' car would have had to be in the same shoulder area in which

Howlands truck was traveling to avoid the highway barricades. The witness further testified that he noticed that some of the lights on the barricade had not been flashing properly before they were knocked down by decedent; that there did not appear to be any signs, and that the highway was covered with straw and was slippery at the point of the accident. The witness observed that the decedent's car was traveling at about 50 miles per hour, although it could have been five or ten miles per hour faster.

Howlands passengers corroborated the testimony of the driver. Overjohn did not believe the decedent was exceeding the speed limit, but stated the decedent evidently did not see the barricades in time to stop, although he noticed that the brakes of decedent's car were **applied before the collision.**

Lindell Brangenburg, the other passenger, testified that he did not notice any lights or signs on Route 16 on the west side of the barricade.

The sheriff of Greene County, Darrell McCollom, testified that he was called to the scene of the accident, but did not observe any signs along the way, although he traveled the same direction as decedent. He testified that he had observed that there was not sufficient lighting at the scene of the accident several nights before its occurrence, the only lighting being smudge pots. About one hour after the accident had occurred, the sheriff observed skid marks in a straight line about sixty or seventy feet in length at the scene.

The state trooper who investigated the accident testified that he saw signs warning of "road construction ahead' lit by pot flares; that he observed straw on the pavement just east of the crane and measured skid marks leading up to the rear of the crane which were 66 feet in length. He described a detour on the south side of the

pavement which was approximately 10 feet wide and not of sufficient width to allow two cars to pass safely. The crane was approximately 10 feet wide and was sitting on the two lane highway on the westbound or north side of the road.

Francis R. Halasey, respondent's resident engineer, testified that he investigated the scene of the accident two days after it occurred and the following signs had been erected for a westbound traveler: "Road Under Construction . . . Drive Carefully," which was approximately 1,250 feet from the barricade. The sign is 5 feet vertically and 7 feet 6 inches horizontally, with black letters on a white background; "Speed zone ahead . . . 40 m.p.h." about 2 feet by 3 feet; "Detour Ahead which is 3 feet square, also with black letters on a white background; "Road Repairs Ahead," the same size as the detour sign with a red flag on it; "Barricade Ahead," also 3 feet square; "One Way Traffic" about 575 feet away from the one-way traffic; and an arrow pointing toward the detour road. The barricade horses were described as having a six foot by two foot rail on top, two legs on each end, a flashing amber light and a strip of amber paper made of reflectorized material. Halasey did not know whether on November 11, the smudge pots were operating, not having been there since the day before the accident. The crane had been left on the highway "because it was easier to see and for the rest of the work that was necessary to do the repair job." The crane weighed 10 to 15 tons, and there were no flares, reflector lights, or markings on the crane or on its frame.

Edgar Pethtel, who was Chief of Police at Hardin, Illinois, at the time of the accident, testified that he had passed the scene of the accident about an hour before it had happened and that the area was lit and had lights down the side of the road and underneath the barricade. He was the first law officer on the scene. Pethtel also testified that he

noticed the straw covering the pavement under the wheels of the Hays' automobile. There were flashing lights on the barricade and flare pots on the pavement around the edge of the machine.

Orval Knopp, the construction foreman of the project, testified that the barricades and lights met the specifications as to highway signs, and that there was no further use for the crane for any further work on the road. "The reason we had not moved the crane on this last night of work was that we were working on the ditches." There was no reason the crane could not have been moved off the highway, although, according to Mr. Knopp, it is customary practice to leave construction equipment within the barricaded area.

Before claimant may recover, it must be proved by a preponderance of evidence **(1)** that respondent was negligent; **(2)** that such negligence was the cause of the accident in question; and **(3)** that decedent was in the exercise of due care for his own safety and therefore, free from contributory negligence.

The respondent argues that where there is a preponderance of evidence showing the presence of illuminated warning signs to indicate a hazardous road condition, the driver in failing to observe them was contributorily negligent and the respondent is therefore absolved from liability. ***(Bodie*** vs. ***State,* 21 C.C.R.386,389; *Gray*** vs. ***State,* 21 C.C.R.521; *Terracino*** vs. ***State,* 21 C.C.R. 177, 182; *Knoll*** vs. ***State, 24* C.C.R. *287.)***

Although there was some testimony that the area was not well lit, the respondent established by a preponderance of evidence that a driver travelling in the same direction as decedent should have seen all or some of the seven signs lit by pot flares and placed to warn motorists of the hazard. There were also barricade horses with reflectorized

material running across the top.

Despite the warnings, there was no evidence that decedent heeded them or slowed down before he came upon the crane.

Accordingly, claimant has failed to prove freedom from contributory negligence and the claim must be denied.

(No. 5421—Claim denied.)

ILLINOIS RUAN TRANSPORT CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 7, 1973.

JOHN P. LYNAUGH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

NEGLIGENCE—*burden* **of proof.** Before claimant may recover, he must prove by a preponderance of the evidence that (1) Claimant was free from contributory negligence; (2) That respondent was negligent, (3) That respondent's negligence was the proximate cause of claimant's injuries, and; (4) Damages.

SAME—contributory negligence. Where claimant operated tractor trailer in such a manner that he could not stop it safely within his range of vision, he was contributorily negligent.

PERLIN, C.J.

Claimant seeks recovery of the sum of $9,650.10 for damages arising out of an accident on August 16, 1965, when one of claimant's trucks overturned to avoid colliding with a State dump truck.

Thomas Plank testified as follows: He was operating claimant's tractor and trailer loaded with approximately 8,250 gallons of gasoline, proceeding east on Route 140, a two-lane highway east of Meadowbrook, Madison County, Illinois. It had been raining. He was coming off a hill or grade about 11:20 a.m. when he saw a State dump truck "sitting on the road about two or three hundred feet ahead

and a car behind it blinking its taillights. He saw no warning signs or signals and no flagman. He put on his brakes and tried to stop. There was a car coming in the opposite direction, so he applied his brakes and the cab and trailer skidded off the road sideways and overturned. He estimated that he was going about 40 miles per hour but did not know what distance it would take to stop a **73,000** pound vehicle. The truck turned over about one and one-half times. He had been driving semi-trailer rigs for **22** years. He was familiar with the road. Vision is not as good in a truck as it is in a passenger vehicle because "you are higher up in a truck" and hanging trees block the vision, especially in the summertime.

Charles Richard Johnson testifed for the claimant as follows: He was driving west on Route **140** at the time of the accident. There is a hill and curve "coming on this bridge," a small concrete bridge. There was a State truck stopped right on the bridge. There was "quite a bit of traffic."Just as he came past the State truck he saw a tractor trailer coming down over the hill from the opposite direction. There were no flagmen and warning signals from the east, although there was a flagman standing beside the truck between the bridge and the truck, but he was not using any flags and there were no signs. It had been raining. There were two or three cars stopped behind the truck; he saw claimant's tractor trailer come over the hill. The driver tried to stop but lost control because it was so wet. Then the truck overturned one and one half times. The driver "came out the windshield and landed in the road." Men wearing orange highway jackets directed traffic after the accident, although not before. However, one of these men was standing between the truck and the bridge at the side of the truck before the accident. After the accident the State truck pulled off the road. The witness left the scene after taking the driver to a telephone where he called his company

which called the police. Mr. Johnson testified that he was not a very good judge of distance, but he thought the truck was about one hundred and fifty or two hundred feet away from him when he started losing control of the vehicle and he was about twenty feet away from it when it stopped. The driver was, according to the witness, about **300** or **400** feet away from the car stopped behind the truck when he started losing control. The driver had come down a hill and a curve and then the road was straight right before the bridge. In the opinion of the witness, there was no choice for the truck driver but to brake in order to avoid hitting the cars in back of the truck or the witness' car.

Albert Perkins McCormick testified **as** follows: He was traveling east on Route **140** at the time of the accident and saw the truck coming over the hill and around the curve in his rear view mirror. The witness was just coming to a stop and he flashed his taillights off and on. Perkins stopped because there was another car and a State truck stopped in front of him in the middle of the road. The State men were working on the bridge. He did not see any warning signals or flagman on the highway. The truck was about one hundred yards behind him when he started flashing his signals. He then saw the trailer truck brake, apparently to avoid hitting the witness; the trailer then started slipping to the right and overturned after hitting a stump. There were skid marks approximately 75 feet long on the road. The road was slippery after it rained. He left after the driver was taken to make a phone call. He did not see a flagman go out to control traffic after the accident. When the witness was approaching the place where the truck was stopped he was going about **30** miles per hour on account of the road conditions. The State truck did not have a flashing signal which was operating on top of it. The truck was traveling at about **40** miles per hour.

Dennis Klohr, a maintenance engineer for the Illinois Division of Highways testified on behalf of respondent as follows: He was not an eye witness to the accident, but conducted an investigation of the scene with reference to distances and sites on August **20,1965.** A truck approaching the bridge would have a full view of the bridge a distance of eight hundred feet from the work area on the bridge. The truck finally rested at **283** feet from the bridge. The approach to the area is a moderately steep grade for seven hundred feet and the bridge is visible about **800** feet away which is approximately halfway down the hill.

Dennis Franklin Weaver testified that on the date of the accident, he was working for the State of Illinois as a Section Leader and was engaged in filling pot holes in the pavement on Route **140** at the time of the accident. They had a yellow ton and a half truck equipped with a red light on top. The red light was working. One man, John Smith, of the approximately five-man crew was "flagging" behind the truck and another, Dewey Bail, was "flagging in front of the truck." "We had one-way traffic going" with two flagmen wearing orange vests. Each had paddles with "Stop" on one side and "Go" on the other side. Mr. Bail was about fifty to seventy-five feet in front of the truck and the other flagman, Mr. Smith, was twenty or twenty-five feet behind the truck. Smith had two cars stopped because Mr. Bail had cleared the traffic going west and Smith had two cars stopped waiting to go around the truck and go east. The witness did not observe the Ruan transport truck coming down the highway. He had finished the job and was in the truck when Mr. Bail told him there had been an accident in the back. The witness then pulled the truck off the highway and got out to see the overturned truck. It had been raining and the pavement was slick. There were no signs out saying "Road Work" or "Men Working."

Dewey Bail testified that he was working for the State as part of the maintenance crew at the scene of the accident. He was flagman at the time. Johnson was a flagman with him. Johnson was temporary and that was the first time he had worked with him. Johnson was behind the truck flagging and the witness was a couple of hundred yards east of the truck. They both had a paddle and a red flag. He was dressed with a highway jacket and was guiding one-way traffic; his traffic had cleared and he had let the last car go, getting ready to flag Johnson to let his cars come around at the time the truck came down the hill. He saw the truck approaching the area. Before he saw the truck he heard it as it approached the curve at the top of the hill. He stated: "it's a pretty sharp curve, then it straightens on down, and as I saw him I heard him hit the air brakes; that the truck went straight until it got to the foot of the hill, then it veered off onto the shoulder, hitting the stump and jackknifing." The signal light on the truck was operating at the time and the State truck is colored yellow. The truck was traveling at approximately forty to forty-five miles per hour; that he was not certain of the exact position of the men behind the truck because he was too far up to see them.

Before claimant may recover, it must prove by a preponderance of evidence that **(1)** claimant was free from contributory negligence; **(2)** that respondent was negligent; **(3)** that respondent's negligence was the proximate cause of claimant's injuries, and **(4)** damages.

Claimant contends that "it is the duty of the State of Illinois to maintain the highways within its jurisdiction and under its control in a reasonably safe condition or in the event a dangerous or unsafe condition exists, warn those persons upon the highway of said dangerous or unsafe condition."

Claimant further contends that Thomas Plank was operating the Illinois Ruan truck in a reasonable and safe manner as he approached the bridge on Route 140; that traffic was heavy and it had been raining; that when the State truck and two cars behind the truck came into view, Plank applied his brakes and overturned on the south side of the highway; that it was impossible for him to drive into the west-bound lane because he would have hit a car coming from the east; and that it was the duty of the State to erect warning signs at the approach to the crest of the hill and at the downward curve and post flagmen and a barricade warning of one-way traffic and men working.

Respondent argues that the sole proximate cause of claimant's accident was due to claimant's own negligence in operating a heavily loaded semi-trailer truck under rainy weather conditions in such a manner that he could not stop the vehicle safely within his range of vision so as to avoid collision with any vehicle stopped on the highway in front of him. The respondent further contends that the claimant has failed to maintain the burden of proof as to any negligence on the part of respondent, State of Illinois, and that the negligence of the State of Illinois, if any, was not the proximate cause of the damages sustained by claimant.

Claimant's reply to these arguments are as follows: None of the witnesses testified that Thomas Plank was driving the truck in a negligent or reckless manner; that he applied his brakes when he saw that it was impossible to stop without hitting the car in front of him or to have swerved in the opposite lane without hitting an oncoming car; that he was well within the speed limit.

Although there is evidence of negligence in the State's failure to post warning signals, it would appear that claimant has failed to prove by a preponderance of evidence that its driver was free from contributory negligence.

The record indicates that the truck driver would have had a full view of the bridge and the work area at a distance of 800 feet. Under such circumstances, the driver should have had his vehicle in sufficient control to safely bring it to a stop without skidding off the road.

Recovery is therefore denied.

(No. 5688—Claim denied.)

DOROTHY BARFIELD, PHILLIP BARFIELD, a minor, BARBARA BARFIELD, a minor, and VERNELL BARFIELD, a minor, by HOBERT BARFIELD, their father and next friend, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed* June 7, *1973.*

ROBERT V. NEELY, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER and DOUGLAS G. OLSON, Assistant Attorneys General, for Respondent.

HIGHWAYS—*duty to* maintain. Chapter 95½, Section 11-301, Illinois Revised Statute, holds that the State's supervision of road construction on 34-Q did not create a duty of care to claimants, where claimants were driving on a roadway where a "stop ahead warning sign was not posted.

SAME—*warning devices.* A "stop ahead sign is not mandatory, and the failure to post it does not constitute negligence.

PERLIN, C.J.

Claimants, Phillip Barfield, Dorothy Barfield, Barbara Barfield and Vernell Barfield, seek recovery of $5,000, $1,000, $5,000 and $25,000, respectively, for injuries incurred when the automobile in which they were riding and which claimant, Phillip Barfield, was driving skidded through a T-intersection and into a ditch on the other side of the intersection. Claimants admit that a stop sign guarded the intersection but contend that the proximate cause of the accident was the failure of the State of Illinois to provide adequate warning of the approaching stop sign and T-intersection. The road on which the claimants were

driving was a county road which the State of Illinois had contracted to improve.

The events which led to the accident out of which this cause of action arises are not in dispute. On the evening of October **5, 1967,** claimant, Phillip Barfield, driving his father's **1965** Ford stationwagon, left his home in Karnak, Illinois, en route to a high school basketball game in Joppa, Illinois. He carried six passengers: Cleotis Pounds; Ricky Johnson; claimant, Vernell Barfield; Vivian Ladd; claimant, Dorothy Barfield; and claimant, Barbara Barfield. Phillip Barfield drove east from Karnak on Illinois Route **169,** then turned right, south, on to Massac County Road, designated 34-Q. 34-Q connects route **169** with West Grand Chain Road, the principal path to Joppa. This link is about **three and one-half miles long and deadends at West Grand** Chain, forming a T-intersection. Barfield drove the stationwagon southward along **34-Q** at thirty-five to forty miles per hour.

Earlier in the day it had rained. **A** residue of water and, in some places, mud remained on the road. It was about 8:00 p.m. when Phillip made the turn on to **34-Q.** Night had fallen. The Ford's headlights were on and beaming ahead.

34-Q is a straight road. It is tilted gradually downhill from its north end, Route **169,** and levels off at a point about a quarter of a mile from its southern terminus, West Grand Chain Road. On the night of the accident, a thirty-six inch stop sign stood on the right shoulder of **34-Q** immediately in front of the intersection of **34-Q** and West Grand Chain. The stop sign faced north, and it was properly located. It was designed to protect the intersection from motorists driving south on 34-Q. No obstructions blocked such a motorist's vision of this sign. There were no other signs on **34-Q** warning of the upcoming intersection.

Claimant was aware as he traveled down 34-Q that an

intersection lay ahead but he did not know exactly where it was. He reached what turned out to be the southern end of 34-Q without reducing his speed. Claimant did not see the stop sign until he was four or five car lengths from it. Upon seeing it, he applied the brakes, turning the wheel to the left at the same time. The brakes took hold but the Ford slid by the stop sign, through the intersection, across West Grand Chain Road and into a ditch on the south side of Grand Chain. Phillip, Dorothy, Barbara and Vernell Barfield were severely injured.

34-Q was, and is today, a county road. At the time of the accident, the State of Illinois was in the final stage of a project to improve the road under agreements with Massac County and the federal government. The road had already been widened and resurfaced. It is not clear what if anything remained to be done but a state engineer was still on the job. The major part of the construction work had been performed by a subcontractor, The Midwest Construction Company, under the supervision of the State of Illinois. Although there is testimony that dirt, which may have been left from the construction work, spotted the road, it is not alleged that the State was negligent in its supervision of the road improvement or in leaving the road itself in the condition it was in on the night of the accident.

The agreement between Massac County and the State of Illinois did not expressly allocate the duty to maintain traffic safety signs on 34-Q. It is clear that before the agreement, Massac County had exclusive jurisdiction over the road with the attendant obligation to provide traffic signs. It was the county which had placed the stop sign at the southern end of 34-Q. The agreement did provide that upon completion of the improvement, the maintenance of traffic warning signs would be the responsibility of Massac County.

Claimants base their claim for compensation from the State on the theory that the State was negligent in failing to erect a "Stop Ahead' sign or some other warning sign on **34-Q** to alert drivers to the T-intersection which lay ahead. Such a duty, claimants assert, existed because the State could reasonably have foreseen the conditions which caused this accident—darkness, a wet and muddy road. This duty adhered to the State even though **34-Q** was a county road because the State had assumed temporary "jurisdiction" over **34-Q** by undertaking to improve it.

Respondent argues that as **34-Q** at all times remained a county road, never becoming part of the Illinois State highway system, no duty devolved upon the State to place and maintain traffic control devices. The State's supervision did not create such a duty because the State which authorized the work specifically precluded that possibility. Respondent also takes the position that even if **34-Q** did temporarily fall within its jurisdiction, the posting of a warning sign was not necessary to the fulfillment of its jurisdiction. The posting of a warning sign was not necessary to the fulfillment of its duty of care toward motorists traveling south on **34-Q.**

In order for claimants to recover, they must prove by a preponderance of evidence **(1)** that respondent was negligent; **(2)** that such negligence was the cause of the accident in question; and **(3)** that claimants were in the exercise of due care for their own safety and, therefore, free from contributory negligence.

Before reaching the negligence issue, we must resolve the threshold question of whether the State owed claimants any duty of care. The State of Illinois is not liable for the acts or omissions of its political subdivisions. *Schwartz* vs. ***State*** *of Illinois,* **22** C.C.R. **739,740 (1958).** If the need for a warning sign on **34-Q** in fact existed, either Massac County or the State of Illinois was obliged to meet that need.

The agreement under which the construction was performed and whereby claimants allege jurisdiction over the road temporarily passed from the county to the state is ambiguous on the duty to maintain traffic signs. However, the Federal Aid Road Act which authorized the agreement and is expressly referred to in the agreement contains the following language:

"* * *

"The local highway authorities having jurisdiction over a highway or street prior to its selection and designation as part of the federal aid secondary network shall continue to be responsible for its maintenance until such time as it had been constructed as provided herein. After a highway has been so constructed, the department is authorized to maintain it, or, with the approval of the Bureau of Public Roads, to enter into formal agreement with the appropriate officials of the county in which such highway is located, either prior to or after construction, for its maintenance at the expense of such county. * * *" Ch. *95½, Sec. 11-301, Ill. Rev. Stat. (1971)*

If the words of this statute are to be given their ordinary meaning, this court is compelled to hold that the state's supervision of road construction on **34-Q** did not create a duty of care to claimants, at least not on the basis of a transfer of "jurisdictional" authority over the roadway's safety.

The above statute does not dispose of this issue. ***Riggins*** vs. ***State of Illinois,*** 21 C.C.R. **434,438** (1953) cited by claimants, stands for the proposition that when the state is in the process of repairing a highway it is duty bound to use reasonable care in warning the traveling public of any hazard it has voluntarily created. This duty is not a statutory one, relying for its force on existing or assumed jurisdiction over the road. This is the general duty of care applicable to any road construction contractor. Ownership and jurisdictional questions are irrelevant. See also ***Sundin*** vs. ***Hughes,*** 246 N.E.2d 100 (1969) and ***Mummer*** vs. ***State of Illinois, 23*** C.C.R. 130 1135 (1959).

A fundamental difficulty in applying the doctrine of ***Riggins, Mummer*** and ***Sundin*** cases to the facts of the

instant case lies in the distinction between dangers arising from a construction project in progress which itself represents a roadway hazard (e.g., barricades, tractors, detours) and dangers which arise from a fundamental change in the nature of a roadway wrought by a completed improvement (e.g., new surface, more lanes, new intersection). In the latter example, the one which most nearly approximates the case before us, potential hazards, although non-existent but for the road construction, do not stem directly from it, and road builders, having neither the authority nor the expertise to make traffic safety policy decisions, are not held responsible for correcting them.

This distinction may carry less weight where the State is the construction contractor. Were the State to walk away from **a** construction project in which its participation was disproportionately large compared to that of the local jurisdictional authority, leaving hazards directly or indirectly arising from its work ***(Riggins*** vs. ***State of Illinois)*** might compel imposing liability on the State. This, however, is not the situation in the case before us. We find for the reasons discussed below that the State's failure to pose a "Stop Ahead sign on **34-Q** did not expose motorists to sufficient danger to amount to negligence assuming even the most complete duty of care existed.

The purpose of a "Stop Ahead" sign, not surprisingly, is to warn motorists that a stop sign lies ahead. Its use is largely discretionary and it was never intended that this sign precede every stop sign in the state. Where a motorist's view of a stop sign is so obstructed that he does not have sufficient time to stop, the use of a "Stop Ahead sign becomes mandatory. The statute which prescribes the state's duty to employ these signs lists the following obstructions requiring its use:

"horizontal or **vertical curves, parked vehicles** or **foliage and highway approach speeds . . . and cases where there is poor observance of stop signs."**

The record of this case reveals that none of the above conditions existed. There was at least 1300 feet and perhaps as much as 3,000 feet of unobstructed vision to the stop sign at the T-intersection of 34-Q available for motorists traveling south. It has been held in this state that the failure to maintain a "Stop Ahead" sign where the stop sign was visible for a distance of 1,000 to **500** feet was not negligence. ***Shivas*** vs. ***State of Illinois,* 25 C.C.R.256, 260 (1965).**

This Court has made the following statement:

" . . . The 'Stop Ahead' sign in question was not mandatory within the foregoing statutory requirements, but only permissive, and need not have been placed at the location in question at all. The Court concludes it must follow that failure to maintain a sign which was not required to be placed in the first instance in no way constitutes negligence." *Shivas*, **supra at 260.**

The primary obstruction of claimants' view was the darkness of night. A contributing cause to their failure to stop in time was the slippery condition of the road which had become wet and muddy from an afternoon rain. Roads are improved and warning signs posted to regulate the normal flow of traffic under normal conditions of a specific area and to warn motorists of existing hazards which they cannot anticipate. The State is not obligated to warn motorists of natural hazards, the presence of which they are fully apprised of, the effects of which they are already familiar with. Darkness and rain combine to make driving hazardous by restricting visibility, turning dirt into mud and dry asphalt into slick asphalt. A reasonably prudent man is deemed to be aware of these physical processes and their resulting danger. No additional warnings are necessary. ***Newcomm* vs. *Jul*, 273** N.E.2d **699 (1971).** The condition of **34-Q** on the night of the accident, made hazardous by the natural phenomenon, would not have required an additional warning sign if none would have been required under dry, daylight conditions. As we have stated above, no "Stop Ahead" sign was necessary under

those conditions. Accordingly, claimants have failed to sustain the burden of proving negligence in failing to erect the sign.

The fact that mud contributed to claimant's slide into the ditch, mud which represented dirt left behind by the State's subcontractor, does not alter the result of this case. It has not been shown to this Court's satisfaction the extent to which dirt was in fact on the road, or that it was left from the construction work, or that it represented anything more than a natural runoff from the shoulder during the rain. Resolving these questions in claimants' favor merely shifts the focus of this case to contributory negligence. As claimants admit awareness of these conditions yet failed to take reasonable precautions in light of them, recovery would nonetheless be barred for failure to prove freedom from contributory negligence. *Clark* vs. *Quincy Housing* Authority, 229 N.E. 2d 780, Ill.App. 2nd 458.

Recovery is therefore denied.

(No. **6892—Claimant awarded $5,372.00.)**

MEDART DIVISION OF JACKES-EVANS MFG. CO., **Claimant,** *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, **Respondent.**

Opinion filed June 7, 1973.

MEDART DIVISION OF JACKES-EVANS MFG. CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* **When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.**

PER CURIAM.

(No. 7060—Claimant awarded $2,948.00.)

GREER TECHNICAL INSTITUTE, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed June 7, 1973.

GREER TECHNICAL INSTITUTE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7100—Claimant awarded $8,050.00.)

MORRISON-ROONEY *ASSOCIATES,* LTD., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.

Opinion filed June 7, 1973.

MORRISON-ROONEY ASSOCIATES, LTD., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7107—Claimant awarded $565.02.)

ROCK ISLAND COUNTY, ILLINOIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 7, 1973.

ROCK ISLAND COUNTY, ILLINOIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

APPROPRIATION—*return* of *fugitives.* Claimant would recover for cost of return of fugitives from justice, where State was unable to anticipate the amount necessary to appropriate for this expense.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto and the Court being fully advised in the premises;

THIS COURT FINDS that this expenditure was for the return, by the County of Rock Island, of fugitives from justice. The counties are required to travel to other jurisdictions for the return of fugitives when the fugitives have been located and apprehended in various jurisdictions throughout the country. The expenses herein reflect the expenses incurred by the County of Rock Island in sending their sheriffs and deputies to return apprehended fugitives. The investigation and reports from the Department of Law Enforcement indicate that the appropriations for this purpose were expended and a deficiency appropriation of $20,000.00 was requested. However, even before the $20,000.00 was received for reimbursing the various counties for these expenses, it became apparent that even this $20,000.00 deficiency appropriation was going to be inadequate. The original appropriation was expended and the $20,000.00 was used up also, leaving some of these expenses unpaid. Under the rules set forth in Fergus vs. *Brady*, 277 Illinois 272, this Court finds that inasmuch as the State was unable to anticipate the amount necessary to appropriate for this expense and that since this expenditure was one required of the State by statute, this Court awards the claimant the amount of FIVE HUNDRED SIXTY-FIVE AND 02/100 DOLLARS **($565.02).**

(No. 7108—Claimant awarded $64.33.)

ROCK ISLAND COUNTY, ILLINOIS, Claimant, ***vs.*** STATE OF ILLINOIS, Respondent.

Opinion filed June 7, 1973.

ROCK ISLAND COUNTY, ILLINOIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

Appropriation—return of fugitives. Claimant would recover for cost of return of fugitives from justice, where State was unable to anticipate the amount necessary to appropriate for this expense.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto and the Court being fully advised in the premises;

THIS COURT FINDS that this expenditure was for the return, by Rock Island County, Illinois, of fugitives from justice. The counties are required to travel to other jurisdictions for the return of fugitives when the fugitives have been located and apprehended in various jurisdictions throughout the country. The expenses herein reflect the expenses incurred by Rock Island County, Illinois, in sending their sheriffs and deputies to return apprehended fugitives. The investigation and reports from the Department of Law Enforcement indicate that the appropriations for this purpose were expended and a deficiency appropriation of $20,000.00 was requested. However, even before the **$20,000.00** was received for reimbursing to the various counties for these expenses, it became apparent that even this **$20,000.00** deficiency appropriation was going to be inadequate. The original appropriation was expended and the **$20,000.00** was used up also, leaving some of these expenses unpaid. Under the rules set forth in Fergus vs. ***Brady,*** **277** Ill. **272,** this Court finds that inasmuch as the State was unable to anticipate the amount necessary to appropriate for this expense and that since this expenditure was one required of the State by statute, this Court awards the claimant the amount of SIXTY FOUR AND 33/100 DOLLARS ***($64.33).***

(No. 73-CC-154—Claimant awarded $704.51.)

KEITH N. BURTON, ET AL., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June *15, 1973.*

HENRY W. GAUWITZ, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—199—Claimant awarded $54.00.)

LEWIS & CLARK COMMUNITY COLLEGE, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June *15, 1973.*

LEWIS & CLARK COMMUNITY COLLEGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—202—Claimant awarded $596.00.)

SARGENT-WELCH SCIENTIFIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June *15, 1973.*

SARGENT-WELCH SCIENTIFIC COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—243—Claimant awarded $13.20.)

PAUL KARL RIEMER, JR., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June *15, 1973.*

PAUL KARL RIEMER, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—254—Claimant awarded $145.97.)

LINCOLN OFFICE SUPPLY CO., INC., Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June *15, 1973.*

LINCOLN OFFICE SUPPLY CO., INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* uppropriotion. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—255—Claimant awarded $427.90.)

BI-LINGUAL EDUCATIONAL SERVICES, Claimant, vs. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed June *15, 1973.*

BI-LINGUAL EDUCATIONAL SERVICES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—256—Claimant awarded $820.56.)

XEROX CORPORATION, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed June *15, 1973.*

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—285—Claimant awarded $228.00.)

TOM COADY PAINTING COMPANY, Claimant, *us.* STATE OF ILLINOIS, ECONOMIC AND FISCAL COMMISSION, Respondent.

Opinion filed June *15, 1973.*

TOM COADY PAINTING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACT—*lapsed* appropriation When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—292—Claimant awarded $661.91.)

STOP AND SHOP, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

***Opinion filed June 15,* 1973.**

STOP AND SHOP, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—303—Claimant awarded $16.40.)

FRANK CANKAR, SR., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

***Opinion filed June 15,* 1973.**

FRANK CANKAR, SR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—322—Claimant awarded $538.54.)

URBAN TECHNICAL CENTERS, INC., Claimant, *vs.* **STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION,** Respondent.

***Opinion filed June 15,* 1973.**

URBAN TECHNICAL CENTERS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—333—Claimant awarded $256.85.)

FAYETTE COUNTY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 15, 1973.

MARTIN J. CORBELL and GEORGE H. HUBER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73—CC—341—Claimant awarded $8,671.50.)

DESAULNIERS AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed June 15, 1973.

DESAULNIERS AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5909—Claimant awarded $1,500.00.)

NORMAN G. MILLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 15, 1973.

JOHN B. SCHWARTZ, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, Assistant Attorney General, for Respondent.

NEGLIGENCE—*constructive notice.* Defective sewer cover, existing for a *six* month period, is sufficient constructive notice to respondent, to entitle claimant to recover damages for **leg injury caused by stepping into broken sewer cover, absent negligence on his part.**

HOLDERMAN, J.

Claimant filed his complaint on August 26, **1970,** for damages sustained on September 28, **1968,** at about **12:30** a.m. **as** claimant was walking along the curbing adjacent to the east side of Rand Road between Windsor Drive and Clarence Avenue in Cook County, Illinois.

While walking, it is claimant's contention that he stepped onto a sewer cover from which the center bar of grating was missing. The claimant's left foot and leg went into the broken sewer cover causing injuries to his left leg.

The evidence shows that on the night in question, claimant was coming from work; that he was dropped off at a gasoline station a short distance from where he was injured; and that he was unable to contact his wife so she could pick him up, so he started to walk in a northerly direction on the east side of Rand Road to go to his home. The evidence is that there was not any lighting in the vicinity; that when he stepped off the shoulder onto the road, his left foot went into the sewer. After he removed his left foot and leg from the sewer, a passerby picked him up and gave him a ride home.

In the morning he was treated by Dr. Jerome Walker and x-rays of his leg were taken at the Holy Family Hospital.

Claimant's special damages are:

Dr. Michael Ruane and Dr. Jerome Walker	**$121.00**
Dr. Kenneth Maier	**8.00**
Holy Family Hospital x-rays	12.50

Claimant testified that he was off work for a period of seven weeks and one day; that his earnings prior to the injury were **$143.00** per week; and that he had a total loss of earnings of **$786.40.** He further testified to the fact that his union paid him **$85.90** per week while he was off work; and that the union had a subrogation agreement with him in the amount of **$618.48** relating to any recovery by the claimant.

Frank Brancato, Jr., called as a witness on behalf of the claimant, testified that the condition of the missing grate in the sewer cover existed since March, **1968,** a period of some six months prior to the accident in question.

A departmental report was filed on behalf of respondent, which admitted that the center bar of the grate was broken but denied that the respondent had any knowledge of the defective condition prior to claimant's alleged accident. Claimant's exhibits 2, 3 and **4** in evidence are photographs of the sewer cover in question and show a bar in the grating is missing.

Respondent bases its defense upon two propositions: **(1)** that the State is not an insuror of persons using its highways, and **(2)** that it did not have actual or constructive knowledge of the condition of this grating.

Respondent further contends that claimant failed to establish his case in that he was free from contributory negligence or that he was in the exercise of due care for his own safety.

Respondent cites many cases in support of its contention, among them ***Joyner*** vs. ***State of Illinois, 22*** C.C.R. **213,** ***Weygandt*** vs. ***State of Illinois, 22*** C.C.R. **478,** Hook vs. ***State of Illinois,*** **22** C.C.R. **627,** ***Barrett*** vs. ***State of Illinois, 23*** C.C.R. **149,** and ***Callen*** **vs.** ***State of Illinois, 23*** C.C.R. **172,** in addition to other cases.

Testimony is to the effect that the claimant's leg, prior to the injury, was in good shape as it had never been involved in any accident. Claimant, in his brief, cites the case of ***Ann Biel*** vs. ***State of Illinois, 24*** C.C.R. **480.** The facts in that case are greatly similar to the present case and are substantially as follows:

The claimant, while walking on 95th Street at or near **2600** West 95th Street, Evergreen Park, Illinois, stepped off the curb to enter a vehicle on the road. As she stepped, her right foot went through a broken manhole cover adjacent to the curb. Rings were missing in the cover and her right leg entered the cover. A witness testified that he knew of the condition sixty to ninety days before the accident.

In that particular case, the Court held for the claimant, stating "There is no question of the duty of the State of Illinois to maintain the manhole cover in proper repairs for the safety of persons and vehicles upon the highway."

Claimant also cites the case of ***Koski, et al*** vs. ***State of Illinois, 24*** C.C.R. 161. In that case, there was a substantial hole in the pavement, which was eight feet by four feet and four inches in depth. Evidence showed that the hole had been in existence for approximately one month before the accident occurred.

The Court, in passing upon the question, noted that his was sufficient evidence to give constructive notice to the respondent entitling claimant to an award.

The Court, in this particular case, also referred to the case of **Visco** vs. ***State of Illinois,*** 21 C.C.R. **480,** which reaffirms the statement that there cannot be any hard or fast rule in determining when it can be said that the State had "constructive notice" of a dangerous condition, and each case must be decided on its own particular facts.

In his brief, the claimant takes the position that the

evidence of the claimant as to his injury, his damages and the occurrence is unrefuted by the respondent and it must therefore be taken as truth, citing the case of ***Gener*** vs. ***State*** of ***Illinois, 25*** C.C.R. 99. In the ***Gener*** case, the claimant established a prima facie case of negligence against the respondent thereby shifting the burden of' proof to the respondent. The respondent in ***Gener,*** as similarly presented in this case, offered no evidence or proof to rebut the prima facie case of the claimant. The court held an award should be made to the claimant.

In ***Gillespie*** vs. ***State of Illinois, 25*** C.C.R. 309, it was held that respondent had constructive notice of a defective condition when the evidence disclosed that the condition had existed for four months prior to the accident.

Another case dealing with constructive notice was the case of ***McCanley, et al*** vs. ***State*** of ***Illinois, 25*** C.C.R. ***94*** (1965).

There is not any evidence that there was contributory negligence on the part of the claimant, unless it can be said that the fact he was walking along a State highway in the dark is contributory negligence.

It is the opinion of this Court that the claimant has proven the necessary elements to entitle him to recovery for the damages sustained.

As to the question of damages, the total medical bills are rather nominal, and it seems that claimant's claim of seven weeks of lost time was unwarranted by the injury sustained.

It is the opinion of this Court that claimant is entitled to an award in the amount of $1,500.00 and an award is hereby made in that amount.

(No. **6257—Claimant awarded $1,950.00.)**

ATKINS, BARROW AND GRAHAM, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 15, 1973.

D. V. DOBBINS, Attorney for Claimant.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*service* rendered. Where services rendered by the claimant were services requested by the representative of the State, and the work was accomplished in a satisfactory manner, an award would be entered.

HOLDERMAN, J.

The claimant filed a claim in the amount of $1,950.00 for architectural services rendered by it in connection with the construction of a building at Jackson State Hospital erected by the Illinois Building Authority. Claimant had a contract with the Illinois Building Authority to render services and was paid for all services rendered except for the additional services forming the bases for this claim.

A joint stipulation was entered into between claimant and the Assistant Attorney General consenting to an entry of an award in the amount **of** $1,950.00. The theory of the claimant was that the refusal for payment was solely due to the fact that funds appropriated had lapsed.

Subsequent to the signing of said stipulation, the State filed a motion requesting that the joint stipulation be disregarded and that the claim be dismissed. In connection with the motion to disregard the stipulation, it is the State's contention that the stipulation was erroneous and argues that since the Illinois Building Authority was a "body corporate" that any action for such services would lie in an action at law and not in a claim before the Court of Claims.

In the file, there is correspondence indicating that the Department of Mental Health had actually contracted for

the services for which compensation would be paid to the claimant.

This Court entered an order allowing the dismissal of the stipulation and denying the motion to dismiss and remanded it to the Commissioner for the sole purpose of determining whether the services were rendered to the Illinois Building Authority or to the Department of Mental Health. Subsequent to said decision, the Commissioner held a hearing and made a report of proceedings.

It appears from the record that after the original contract was entered into with the Building Authority, that the Department of Mental Health requested certain changes and that these changes were authorized by the Supervising Architect.

It further appears from the record that said changes were made satisfactorily as far as the Department of Mental Health was concerned.

The record discloses that there was a meeting held on April **25,1967,** at which meeting were the representatives of the Department of Mental Health, the Jacksonville State Hospital, the Department of Supervising Architect and representatives from the claimant. The changes suggested were concurred in by the Department of Supervising Architect's office, the changes were made, and the structure completed according to the changes.

The record discloses that the goods or services were ordered by authorized personnel in the Office of the Supervising Architect and the Department of Mental Health, and that the services were properly performed. The record further discloses that the Office of the Supervising Architect requested that this fee be paid since it had been earned by the associate architect, and the Department of Mental Health agreed with said request.

It is therefore clear that the services rendered by the claimant were services requested by the representatives of the State and the work was accomplished in a satisfactory manner.

Award is hereby made to the claimant in the amount of **$1,950.00.**

(No. **6291—Claimant awarded $2,980.00.**)

NILE MARRIOTT, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 15, 1973.

JOHN E. HOWARTH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*emergency work.* Where claimant architect accidentally omitted work from bid, but work was of an emergency nature, and there was no violation of the Illinois Purchasing Act, and where there was verbal authorization, claimant would be compensated.

HOLDERMAN, J.

Claimant seeks to recover the sum of **$2,980** for services and materials rendered to the Department of Law Enforcement.

The above amount is for two separate and distinct transactions—one for **$1,495** and the other for **$1,485.**

The evidence discloses that the Department of Law Enforcement had entered into a contract with the claimant for certain work to be done in its office. The contract was for **$26,533.** All of this work was to be done at the Illinois State Police Headquarters on the fourth floor of the Armory Office Building, Springfield, Illinois.

After the work started, it was discovered that the architect for the State had inadvertently left out the work to be done in the removing of one existing door and frame,

which necessitated the contractor closing up the doorway which was in a wall requiring masonry work. The bill for these services was $1,485.

The other changes which were made included the installation of two 14 gauge steel frames, providing electrical conduits, piping and carpentry work, providing cork in the north wall of the Assistant's office, in the west wall of the Superintendent's office, in the south wall of the file enclosure by the receptionist's desk, and to carpet and paint all walls and ceilings in the Legal Counsel's office. Two solid oak doors were also installed for which no charge was made. The bill for these services was $1,495.

Request for payment of these two changes was made and payment was rejected by the State on the grounds that the contract was subject to Article 23 of the General Conditions, which is included in all contracts for the State for over $5,000. It appears that in all contracts of over $5,000, competitive bids must be taken to comply with the Illinois Purchasing Act.

For projects between $1,500 and $5,000, the using agency, with the aid of the Architect's office, requests bids from two or three contractors and is required to place a request for public bids in the local paper.

For projects under $1,500, the using agency is required to get one bid and send it to the Architect's office for review.

A witness for the respondent testified that the written record in his office did not indicate the changes made by claimant for which he is seeking payment and that the only payment requisition, which was received on September 11, 1970, did not contain the subject matter of these claims.

The witness for the State in charge of these matters stated that it normally takes a month to six weeks to put

through a change order. He further testified that his record shows that the requisitions for payment of these two changes were sent to his office for processing on June 30, 1971, and July 1, 1971.

Claimant relies on the Departmental Report filed as prima facie evidence that the work was necessary, performed in a satisfactory manner, for a reasonable price, and that no payment has been made.

The State cites numerous cases to the effect that an action will not lie against the State on quantum meruit for services rendered.

Among them are numerous Court of Claims cases, the last ones being *Schutte, et al* vs. *State* of *Illinois,* 22 C.C.R. 591, *Fergus* vs. *Brady,* 277 Ill. 272, *Johnson County Savings Bank, et al* vs. *City* of *Creston,* 212 Iowa 929, 87 ALR 926, and *United States Rubber Products* vs. *Batesburg,* 110 ALR 144.

The respondent also cites the case of *Illinois Central Railroad Co.* vs. *State* of *Illinois.* In this case, the State of Illinois employees authorized the Illinois Central Railroad Company in writing to make certain repairs to the tracks on the grounds of the Kankakee State Hospital, and it appears that this had been the custom for many years. The Court, in passing upon this case, refused to allow recovery by the claimant, stating that a contract entered into by persons not authorized by law to bind the State and by persons not adhering to procedures prescribed by statute, such as having the contract approved "by the State architect or his consulting engineer and by the board, if they exceed in value one thousand dollars, and by the fiscal supervisor, if they exceed in value two hundred dollars" is not allowable.

It is claimant's contention that this work was done by the verbal authorization of agents of the State and that he was assured by the State's project coordinator that the

projects were authorized.

Upon examination of the testimony of the various individuals of the State dealing with the claim in this matter, the following facts are disclosed.

Captain Denzil *G.* Wills, who was project coordinator for the Illinois State Police, testified that the architect had inadvertently left out the plans to fill in a door between Rooms No. **2** and No. **3,** which was done. His testimony is to the effect that he understood the contractor was authorized to make these changes and he assumed the necessary changes had been made.

As to the other changes that were made approximately two months later, he stated that there had been frequent bombings around the country, and as this was State Police Headquarters, they wanted to increase the security in the area, and in furtherance of this situation, they requested the contractor to put in electrical wiring and conduits, and also two solid ***oak*** doors. It is his testimony that this was the Central Office of the State Police where all the files, records and equipment, etc. were kept, that there had been attacks made upon other Police Headquarters in the State, that it was their desire to protect the record system, and that they desired later to put in security equipment which would require the electrical conduits that were put in at that time. He further testified that if they were not put in at that time, it would necessitate considerable expense and much delay in the tearing up of the area in question and redoing the work.

He further testified that two oak doors were put in at their request, which was not in the original contract, and that there was no charge made for these doors. He stated that these changes were made after a meeting between the Major and the Superintendent and that they had other plans made but could not complete the whole project in this fiscal

year. Since they did not have sufficient money to do everything desired, they wanted to do as much as they possibly could while this contractor was working there. The witness also stated that Major Walter A. Eichen desired to have security doors put in so that eventually they could install closed circuit T.V., and that if that was to be done, it was imperative that the work done by the claimant be done at the time it was done.

Sgt. Robert H. Klemm also testified in this matter. His testimony was to the effect that the architect made an error in leaving out the door which was later closed in and that it was necessary that this be done. He also testified that there were two solid oak doors added and that two doorways were framed in with heavy gauge steel to accommodate other doors which were to be put in later to increase security for the Police Department. This witness also testified that there had been several attempts to bomb police facilities in the State, that some were bombed, and that it was desirous to make these changes for additional protection. He also stated that he discussed this matter with Supt. McGuire, Major Eichen, and Mr. Sheehan, who was the building construction inspector for the program and worked for the Department of Architecture and Engineering for the State of Illinois. He stated there was a conversation between Mr. Dunlap and the contractor relative to these changes. Mr. Dunlap, who was the project coordinator between the Architect and Engineering and the State Police, was in charge of this particular project. This witness also testified that it was completed in a good workmanship-like manner and that it was necessary for his department to have this done during the course of the work.

Mr. Sheehan testified on behalf of the State that he was the building construction inspector and was employed by the office of Supervising Architect. He further testified that

he was aware certain changes had been made in the work done in reference to the contract. The first change that he testified to was the closing of the doorway which had been left out, that he had a conversation with Mr. Dunlap and Mr. Bill Wood, who was the superintendent for Nile Marriott. He testified that the Marriott concern was authorized to go ahead and change the door after a discussion with Mr. Dunlap. He further testified to the second change which no one had previously thought about. He stated that Mr. Dunlap was the individual who had authorized the change. He further testified that he assumed the necessary change orders had been put through and was quite confident they had been. He stated that he didn't like them going ahead unless he specifically had a change order. He further testified that the work was completed in a good workmanship-like manner and that the materials were the standard type of materials used for construction. On cross examination, he also testified to the fact that cork was inserted in the wall behind the secretaries' office so that it would have a quieting effect, and that all of the changes were necessary. He stated that his reasons for the changes being necessary were money, time and from a security standpoint. He also testified that he was not sure whether he had seen any written change order.

Mr. Clarence Burkhart testified for the respondent that he was Project Administrator in the office of Supervising Architect and that he was familiar with the project. He testified as to the procedure necessary in making changes in contracts which agreed with the position of the respondent in this particular case. He further testified that the changes made were not sent to his office for review.

Mr. Marriott, the claimant who testified in this case, said that in his conversation with Mr. Dunlap, Mr. Dunlap stated that he would start his portion of the paper work and instructed the contractor to go ahead with the work.

It is clear from the evidence in this case that the claimant did the work at the direct request of the respondent and that their agent in charge, Mr. Dunlap, had indicated that he would see that the necessary paper work was done.

It is equally clear from the evidence that the changes were necessary and that by making these changes at the time they were made, the State was saved a very considerable amount of money.

It is further clear from the evidence in this case that these changes were, in the testimony of the respondent's own witnesses, a matter of emergency, particularly for security purposes.

It also appears in the record that there was a sum of $5,804.32 that was available for payment of this particular item.

In the case of *Inskip* vs. ***Board of Trustees, University of Illinois,*** **187 N.E.** 2d **201, 26** Ill. 2d **501,** the Court goes into considerable discussion as to the intent of the legislature and in the interpretation of the Purchasing Act. It was the opinion in that case "that the General Assembly did not intend to designate principals of competitive bidding as the only economical procurement practice." In ***Znskip,*** supra, the court construed the provisions of the Act and were called upon to determine the intention of the legislature when it adopted the Illinois Purchasing Act of **1957.** In construing the statute, they made specific findings as to the intention of the legislature which, claimant argues, is controlling here; that: " . . . the Purchasing Act is not violated when a state agency, in good faith and without intent to evade or avoid the provisions of said act, determines that it is more economical to purchase equipment and materials in individual units of not more than $1500 in cost, and does so, without regard to the total of such purchases, **so** long as such purchases are charged to

the proper appropriation."

Claimant also cites the case of ***Elevator Manufacturing of America*** vs. ***State of Illinois, 23*** C.C.R. 98. In this case, claimant filed a claim against the State for labor and materials for removing, repairing and reinstalling a burned out motor for an elevator in the Chicago State Hospital, Chicago, Illinois. In that case, **as** in the present case, there was a departmental report to the effect that the claimant did remove, repair and reinstall the motor, the work was necessary, the cost was reasonable, and the work was excellent. The Court held that this was an emergency matter and therefore should be paid.

It appears to the Court that this was an emergency matter, that the work was done well, the cost was reasonable, the materials were the usual standard, that it was beneficial to the State to have the work done at this time rather than at a later time at a considerable cost, and that there was a prime need for speed in the completion of this work for security purposes.

This Court is therefore of the opinion that the claimant did not violate the Illinois Purchasing Act, Chapter 127, par. 132.5; 132.6; 132.10 because the work for which the claimant seeks an award was done at two different times, with an interval of approximately six weeks between them, and with each requisition being under $1,500.

It is further held that purchases done in good faith and without intent to evade or avoid the provisions of the Illinois Purchasing Act are not in violation of said Act when the State agency determines it is more economical to make purchases in individual units of not more than $1,500 so long as such purchases are charged to the proper appropriation. ***Znskip*** vs. ***Board of Trustees, University of Illinois,*** 187 NE 2d 201, 26 Ill. 2d 501.

These facts, connected with the verbal authorization to

proceed with the work and the emergency that presented itself at this time, are, in the opinion of the Court, sufficient to entitle the claimant to an award in the amount of $2,980.

An award is hereby entered for said amount.

(No. 6854—Claimant awarded $286.00.)

JACQUELINE BYNUM, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed June 15, 1973.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6960—Claimant awarded $87.00.)

JAMES C. MOORE, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 15, 1973.

JAMES C. MOORE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-63—Claimant awarded $296.00.)

ROGER L. CURRY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 20, *1973.*

ROGER L. CURRY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-236—Claimant awarded $51.55.)

EDWARD E. BAKER, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed June 20, *1973.*

EDWARD E. BAKER, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-248—Claimant awarded $67.00.)

PHILLIPS PETROLEUM COMPANY, Claimant, *vs.* **STATE OF** ILLINOIS, **DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed June 20, *1973.*

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73-CC-253—Claimant awarded $227.62.)

LINCOLN OFFICE SUPPLY COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 20, 1973.

LINCOLN OFFICE SUPPLY CO., INC., Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

Comas— -lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73-CC-260—Claimant awarded $24.50.)

HAROLD L. HUFFMAN, President, Regional Board of School Trustees, Vermilion County, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF **PUBLIC** INSTRUCTION, Respondent.

Opinion filed June 20, 1973.

HAROLD L. HUFFMAN, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-263—Claimant awarded $21.50.)

CHARLES REMOLE, Member of Regional Board of School Trustees, Vermilion County, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed June 20, 1973.

CHARLES REMOLE, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-2.64—Claimant awarded $11.00.)

J. COLE MORTON, Member of Regional Board of Trustees, Vermilion County, Claimant, **us. STATE** OF **ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed June 20, **1973.**

J. COLE MORTON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-265—Claimant awarded $38.00.)

DWIGHT B. **LEIGH,** Member of the Regional Board of School Trustees, Vermilion County, Claimant, ***us.*** **STATE** OF **ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed June 20, **1973.**

DWIGHT B. LEIGH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-266—Claimant awarded $22.00.)

JAY PRILLMAN, Member Regional Board of School Trustees, Vermilion County, Claimant, **us. STATE** OF **ILLINOIS, SUPERINTENDENT OF PUBLIC** INSTRUCTION, Respondent.

Opinion filed June 20, *1973.*

JAY PRILLMAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter **an** award for the amount due claimant.

PER CURIAM.

(No. 73-CC-272—Claimant awarded $108.50.)

ST. MARY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 20, *1973.*

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-273—Claimant awarded $96.00.)

ST. MARY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 20, *1973.*

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-286—Claimant awarded $1,712.50.)

POLAROID CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 20, **1973.**

POLAROID CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-304—Claimant awarded $10.40.)

FRANK CANKAR, JR., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 20, **1973.**

FRANK CANKAR, **JR.,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-306—Claimant awarded $108.00.)

ACAN X-RAY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 20, **1973.**

ACAN X-RAY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-344—Claimant awarded $1,325.00.)

GEORGE C. POTTER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion filed June 20, 1973.

GEORGE C. POTTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-345—Claimant awarded $3,600.00.)

GEORGE ZWICKY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 20, 1973.

GEORGE ZWICKY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-357—Claimant awarded $1,313.09.)

FOSTER G. MCGAW HOSPITAL, Loyola University of Chicago, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 20, 1973.

FOSTER G. MCGAW HOSPITAL, Loyola University of Chicago, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-365—Claimant awarded $203.55.)

PASSAVANT MEMORIAL AREA HOSPITAL ASSOCIATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 20, ***1973.***

PASSAVANT MEMORIAL AREA HOSPITAL ASSOCIATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-366—Claimant awarded $24.00.)

PASSAVANT MEMORIAL AREA HOSPITAL ASSOCIATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 20, ***1973.***

PASSAVANT MEMORIAL AREA HOSPITAL ASSOCIATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7104—Claimant awarded $2,180.60.)

EVANSTON HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 20, 1973.

EVANSTON HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7109—Claimant awarded $140.00.)

WEEKS AUTO SEAT COVERS, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 20, 1973.

WEEKS AUTO SEAT COVERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7111—Claimant awarded $131.30.)

JOHN FREEMAN, JR., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed lune 20, 1973.

JOHN FREEMAN, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 5583—Claim denied.)

JEFFREY B. SERAGE, Claimant, *vs.* THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, Respondent.

Opinion filed June 21, 1973.

GLENN & LOGUE, Attorney for Claimant.

WILLIAM E. LARRABEE, Attorney for Respondent.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—*negligence.* Claimant could not recover for injuries arising out of the mere presence of snow and ice accumulating because of natural causes.

HOLDERMAN, J.

On Sunday, January 14, 1968, at about 9:30 a.m., claimant slipped and fell a short distance east of the Commerce West Building on the University of Illinois campus.

The claimant was 28 years of age, a student at the University of Illinois, and was an administrator of the Illiac Four program.

Claimant alleges that as a result of the fall on January 14, 1968, he injured his left knee. He also alleges that he fell again on February 29, 1968, on the campus and again injured the same knee.

Claimant alleges that respondent was guilty of negligent and careless misconduct in one or more of the following ways:

A. Negligently and carelessly failed and omitted to remove ice from the walks and approaches to the University Building hereinbefore referred to after the same had been there for an unreasonable length of time when the Defendants knew or in the exercise of due care should have known that the same was heavily

travelled by students and teachers and some of them might fall and be injured thereon.

B. Negligently and carelessly failed and omitted to warn the Plaintiff of the dangerous condition thereof after said ice had been on the sidewalk for an unreasonably long period of time and after the Defendant knew or in the exercise of due care should have known that the same was dangerous to people, students and teachers travelling thereon.

C. Negligently and carelessly permitted ice to accumulate unnaturally at said place after they knew or in the exercise of due care should have known that the area where the ice accumulated was heavily travelled and someone walking thereon might be injured.

The record discloses that on the day in question snow was falling and had fallen on several preceding days. John W. Wilson, meteorologist for the University of Illinois, introduced the records for January 12th, 13th and 14th and also for February 29th. On January 12, 1968, the temperature was below freezing and precipitation was 1/10th inch and at 7:00 a.m. there were six inches of snow on the ground. At 7:00 a.m. on January 13,1968, there had been precipitation of 5.4 inches of snow, and there was then nine inches of snow on the ground. On January 14, 1968, three inches of snow fell, and at 7:00 a.m. there were 13 inches of snow on the ground with below freezing temperatures, the high temperature for that day being 32°.

On February 29, 1968, there was only a trace of snow with temperatures below freezing all day.

Bruce Johnson, supervisor of ground maintenance at the University of Illinois, testified that he had held that position since 1967 and that his duty was ground maintenance which included clearing of the campus area of snow and ice and that he had 44 or 45 employees engaged in that work. He testified that they use Ford industrial tractors with blades or brooms and also garden type tractors and sand spreaders. He also testified that he had some 650 acres of campus to take care of and that the area where the accident occurred was under his control. He further testified that while Saturday and Sunday are not usually working days for his maintenance crews, they did

work on Saturday, January 13,1968, for a period of 9 hours and they worked on Sunday, January 14,1968, for a period of 7 hours, and they could cover the campus area in approximately 3 hours.

He testified that on February 28th, the crew came to work at 5:30 a.m. and on February 29th, they came to work at 8:00 a.m.

Claimant testified that after he fell on the 14th day of January, he was taken to McKinley Hospital where he was treated by Dr. Joseph Stilwell. Dr. Stilwell testified that he first saw the claimant on January 15th at which time he was informed by the claimant that he had slipped on the stairs on the 14th of January. This was denied by the claimant in cross-examination and he testified that he referred to an ankle he had hurt on the stairs.

Claimant was also treated by a Dr. **Ross,** who was informed by the claimant that he had been injured on January 14th and that he had again fallen on February 29th.

It is clear from the evidence that there was a very heavy fall of snow in the area where the accident took place, that it was an area of heavy traffic used by the 32,000 students of the University of Illinois, and that part of the snow had been packed into ice, and the areas where he fell on both occasions were level and the only reason he fell was because of the ice and snow.

The claimant contends that the ice was present on the approach to the Commerce West Building and had been for several days and that it was an'unnatural accumulation due to the fact that the sidewalk over which the ice formed was heavily shaded by the buildings in the area so the sun never reached the ice. He contends that since it was an unnatural accumulation, the University of Illinois and the State of Illinois are consequently liable.

The argument that the snow and ice in an area shaded by a building is an unnatural condition does not seem to be justified by any decisions.

The claimant, in order to effect a recovery, must prove that the State was negligent and that as a result of the negligence of the State and without any contributory negligence of the claimant, the injury complained of occurred.

It does not appear from the evidence that the State was negligent in any manner, shape or form. On the contrary, it appears that the State used extraordinary diligence in removing the snow and ice, particularly when it is shown that the whole area could be cleared in approximately 3 hours, but even with the diligent effort made by the State, during a heavy snowstorm it is impossible to keep an area completely free of snow and ice. To impose upon any municipality, university or property owner the impossible burden of keeping their property free of snow and ice at all times would impose a burden that would quickly put them all out of business.

Without passing on the question of whether there was snow and ice on the area where the accident occurred, and the claimant an individual of mature years who still ventured forth upon it and who might consequently be guilty of contributory negligence, we believe it is not necessary to pass upon the possibility of any contributory negligence factor.

It is the law of this State that the mere presence of snow and ice accumulating because of natural causes is not such negligence as to make the owner of the property in question liable. *Zide* vs. *Jewel Tea* Co., 39 Ill. App. 2d 217, 225 (1963).

We believe that the points involved in this case are

more fully set forth in the case of *Dreikers* vs. ***State, 23*** C.C.R. 85, 89 (1959) where the following language is used:

"It is common knowledge that the northern half of Illinois is subject to miserable and many times dangerous conditions for four or five months of the year. Sleet, ice and snow make walking or driving a genuine hazard. In spite of reasonable efforts made to remove these hazards, many people are injured through no fault of their own."

Since the evidence introduced in this case does not support the charge of negligence, the only way to account for the misadventure is to accept it as an unfortunate accident.

It is the opinion of the Court that the claimant having failed to sustain the burden of proof necessary to'maintain this action at that time, claim is denied.

An award to claimant is therefore denied.

(No. 5583)

Supplemental Opinion

JUDGE BURKS concurring.

I join the opinion of Judge Holderman and am adding these comments to cite a very recent opinion of the Illinois Appellate Court which I believe strongly supports the decision of our court in this action.

I refer to the case of Davis vs. ***City*** *of* Chicago, **289** NE ***2d*** 250. Since volume 289 has not yet been published, the opinion is now found-in the NE 2d "Advance Sheets" (Illinois edition) dated December 20, 1972. This Davis decision, entered on October 20,1972, may be regarded as a "landmark" case, and I felt it would be useful to have its key points of authority included in our published opinion.

The facts in the Davis case were strikingly similar to the case before us. There were six or seven inches of snow

on the sidewalk at 59 West Monroe Street where the plaintiff (Davis) slipped, fell and broke his kneecap. There was also a light angle of incline in the sidewalk at this point (an incline of 5.7').

In the trial court, the jury found that negligent maintenance of the sidewalk on the part of the City proximately caused plaintiff's injury, and that plaintiff was not contributorily negligent. The Appellate Court reversed the jury's verdict and the $25,000 personal injury judgment for Davis against the City. In so doing, the court stated the following rules of law which I feel are applicable to the case we have just decided:

"[1] The law does not require that each municipality keep all sidewalks in a perfect condition at all times, nor does the law impose the duty to correct slight variations from level or other minor defects. See *Arvidson* vs. *City of Elmhurst*, 11 Ill. 2d 601, 604, 145 N.E.2d 105.

"[2] A municipality is not liable for condition of its sidewalks caused by the natural accumulation of ice and snow, provided the walk is properly constructed and no other defect is shown.

"[3-4] For pedestrian to recover against municipality for injuries sustained in fall on sidewalk, a defect in sidewalk as a proximate cause is essential, and recovery will be denied where accident is caused solely by naturally icy surfaces.

"[5] Test to be applied in determining municipality's negligence with respect to maintenance of sidewalk is whether a reasonably prudent man would anticipate some danger to persons walking upon the sidewalk and take action to avoid it."

(No. 6219—Claimant awarded $19,200.54.)

LUVONE C. **Scorr,** Claimant, *vs.* **STATE** OF ILLINOIS, Respondent.

Opinion filed June 21, 1973.

HARRY S. POSNER, FRED S. POSNER and SAMUEL BUSSAS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*negligence—injury to* inmate. Doctrine of contributory negligence would not apply to a prison inmate where inmate was following the instruction of his superiors.

HOLDERMAN, J.

Luvone **C.** Scott, claimant, filed his claim for injuries sustained by him while he was an inmate at the Stateville Penitentiary and working on the **S**tateville Penitentiary Farm in Joliet, Illinois.

The record discloses that the claimant had been assigned by the respondent to labor in the corn cribs and around the farm and, in particular, in harvesting the corn crop and seeing that it was placed in the crib.

On the 11th day of November, 1970, claimant was engaged in unloading a load of corn which had been brought to the place for unloading by a John Deere tractor. 'It appears this tractor was a John Deere of 1950 vintage, which was one of the oldest tractors in use on the prison farm. This tractor was equipped with a hand clutch rather than the ordinary foot clutch.

The record discloses that if the tractor was allowed to run while stationary, there was considerable vibration and at times this vibration would place the tractor in gear.

On the day in question, this particular tractor had brought a load of corn and it was the duty of the claimant to unload it.

Immediately before the occurrence, the rig was backed in close to the corn cribs by an inmate who stopped the tractor approximately three feet away from the claimant, got off the tractor, left the motor running and gear selector in neutral, and left the scene. It also appears that the guard, who was on this detail, was not present at this particular time.

The trailer full of corn was hitched to the tractor, and to release it, it was necessary to pull the pin on the hitch. The claimant straddled the hitch in attempting to release the pin, and while doing so, heard a snap, turned around,

and the tractor, which had vibrated into reverse gear, pinned claimant between the tractor and the trailer. The tractor then ran over claimant with its right rear wheel, which was approximately five feet high with a large size tire. Claimant extracted his left leg and the tractor, still moving, caught his right leg which he freed, and it again caught his left leg, which he could not extricate.

The farm superintendent at the State Prison testified that the tractor in question was a 1957 model and operated with a hand clutch and had a separate gear selector. He also stated that the tractors that had a foot clutch were a lot safer. He also stated that the tractor in question had 50% more vibration than other tractors using a four cylinder motor because the engine is not balanced.

He further testified that despite his knowledge of the tractor's propensity to vibrate and despite his knowledge that the hand clutch was not as safe as the foot clutch, he had instructed his drivers, when called away, to leave the engine neutral. Such a procedure required the hand clutch to be pulled back and snapped into position so that it is disengaged. If disengagement is accomplished, the tractor may be left standing in gear and it will not move. If disengagement is not accomplished, the tractor may vibrate enough to throw the vehicle back into whatever gear in which the selector was set.

The nature and extent of claimant's serious and permanent injuries are not a subject of dispute.

Medical and hospital bills were introduced totalling $1,748.95, and a medical statement of Dr. Zeitl and State Penitentiary medical records were admitted, along with the medical records of Joliet Hospital and Dr. Duffy's report. In addition to these reports, there was a medical report submitted by Carlos Scuderi, M.D., an orthopedic surgeon from Chicago. His report indicated there was a reduced

fracture of the middle third of the left tibia held with four screws and that there was a further fracture of the middle third of the fibula without any screws. His diagnosis was "healed both bone fractures of the left leg united with very slight medial bowing, and scarification of the right loin with no apparent underlying bony or vascular pathology." The doctor concluded by saying that the present condition of the claimant was permanent.

Immediately after the accident, claimant was taken to St. Joseph Hospital where he stayed for 17 days, and was back in the hospital on 2 or 3 occasions. He used a walker for one month and crutches for 14 months. He contends that his left leg is 2 to 2½ inches shorter than his right leg, that he cannot run, and that he has difficulty in performing **such** simple operations as **climbing** stairs and putting on **his** trousers.

It is apparent from the record and the testimony of Captain Brown of the Prison staff that there were two other inmates injured at the same time and during the same occurrence as claimant was injured.

Respondent's position is that claimant has failed to sustain his burden of establishing by a preponderance of the evidence that he was free from contributory negligence since claimant had no right to expose himself to a known danger and then recover damages for an injury which he might have avoided by the use of reasonable precaution, and cited the cases of ***Alberts*** vs. ***Continental Grain Co.***, 220 F. 2d 847 (7th Cir. 1955), ***Lovenguth*** vs. ***City of Bloomington,*** 71 Ill. 238, and ***Beidler*** vs. ***Branshaw***, 200 Ill. 425.

Respondent also takes the position that claimant may not rely upon the doctrine of ***res ipsa loquitur*** because this doctrine may be invoked only on charges of general negligence, citing three cases: Jackson vs. 919 ***Corp., et al***,

344 Ill. App. 519, 101 N.E. 2d. 594 (1951), *McClure* vs. ***Hoopeston*** Gas ***and Electric Co.,*** 303 Ill. 89, 135 N.E. 43 (1922), and *Thriege* **vs.** ***State of Illinois, 24*** C.C.R. 470 (1964).

In the ***Alberts*** vs. ***Continental Grain Co.,*** 220 F. 2d. 847 (7th Cir. 1955) case, the claimant sustained an injury when a platform or hoist lifting a large grain hauling truck was lowered on his foot. The facts disclosed that the plaintiff had past experience with trucks and motor vehicle hoists and the Court held, as a matter of law, that plaintiff's failure to use due care to keep his foot out of the path of the truck was negligence which contributed proximately to the injury, and made the following statement:

"A party has no right to knowingly expose himself to danger and then recover damages for an injury which he might have avoided by the use of reasonable precaution."

The State alleges that claimant, in this particular cause, knew of the condition of the tractor, and that he voluntarily placed himself in a position where the accident might happen.

In response to the question of res ***ipsa liquitur,*** respondent's contention is that said doctrine can only be involked upon charges of general negligence, and that in the present case, general negligence was not alleged but only a specific act of negligence which caused the accident.

Respondent cites a number of cases to this effect, including *Traylor* vs. ***The Fair,*** 243 N.E. 2d, 200, and *O'Rourke* vs. ***Marshall Field & Co.,*** 307 Ill. 197, 138 N.E. 625, 27 A.L.R. 1014.

The doctrine of ***res ipsa loquitur*** requires the plaintiff to establish that the injuries complained of were caused by an agent or instrumentality within the control or management of the defendant, that plaintiff was free from contributory negligence, and that the result is one normally

not occurring without negligence in control or management of the agency or instrumentality.

The question before the Court thus resolves itself as to whether or not the claimant, a prison inmate who worked directly under the orders and supervision of the respondent's agents, knowing of the propensity of this particular tractor to vibrate and go into gear, was guilty of contributory negligence. It appears from the record that it was the direct instructions of the respondent's agents in requiring the claimant to do the work that occasioned the injuries,

It would appear that the ordinary doctrine of master and servant would not apply in a case such as this. In the ordinary master and servant case, servant has the right and ability to choose to a large degree whether he will or will not perform certain acts. This choice is doubtful in a case where a prison inmate, who takes orders directly, can be punished if they are not followed. To say the least, his right of choice is fairly limited.

This being the situation, the fact that the claimant placed himself in a position in which the accident resulted, cannot, in the opinion of the Court, be construed as contributory negligence.

The claimant has shown that this tractor was exclusively under the control of the respondent and that the injury would never have occurred without the negligence of the respondent, and that this negligence was the proximate cause of the injuries.

The question of damages cannot be measured by the amount of medical and hospital bills and the lost time alone. The "lost time" factor is negligible due to his incarceration and inability to work upon release from the prison hospital.

The medical evidence is undisputed that this is a severe and permanent injury and the record shows that there are still screws in the left tibia, which will be there permanently, 'and scarification of the right loin, which will also be permanent.

It is the opinion of this Court that claimant be awarded the sum of **$22,000.00,** less the amount due to the State of Illinois Department of Public Aid, which is in the amount of **$2,799.46** as shown by respondent's Brief, which results in a new award of $19,200.54.

An award is hereby made in the amount of **$22,000.00,** less the expenditures above set forth.

(No. 73—CC—103—Claimant awarded $5,312.00.)

NATIONAL CASH REGISTER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 25, 1973.

NATIONAL CASH REGISTER Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—***lapsed appropriation.*** When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 6891—Claimant's rights upheld and enumerated and amount of relief reserved to discretion of Legislature.)

ILLINOIS EDUCATION ASSOCIATION, ET AL., An Illinois Not-For-Profit Corporation, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed June 25,* 1973.**

LAWRENCE JAY WEINER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

PENSIONS—*contractual relationship.* **Both the State constitutionand the State statutes create a contractual relationship between the State and teachers who are members of pension plans.**

APPROPRIATIONS—*funding of pension plan.* **Court would refer to legislature for appropriation of funds to fully fund pension plan.**

BURKS, J.

This case was filed September 12, 1972, by the Illinois Education Association, an Illinois Not-For-Profit Corporation, and various named individuals, as individuals, and on behalf of all other participants, members, annuitants, and beneficiaries of three specific pension funds: (1) the Teachers Retirement System of the State of Illinois; (2) the State Universities Retirement System; and, (3) the Public School Teachers Pension and Retirement Fund of Chicago.

Claimant's suit is based upon undisputed allegations that the State of Illinois, respondent, has failed to make its contributions to the aforesaid pension systems as required by law *[Ch. 108½, Sec. 15-101 et seq., Sec. 16-101 et seq., and Sec. 17-101 et seq., Ill.Rev.Stat., 19711;* and that such failure on the part of the respondent is a breach of the State's contractual obligations to the members and beneficiaries of the pension systems, said contractual obligations being established by statute and by the *1970 Zllinois Constitution, Art. XZZZ, Sec. 5.*

Claimant seeks an order or decree from this court determining the State's liability as to his claim and rendering an award, or judgment, consistent with its findings.

The petition invokes the court's jurisdiction under Sections 8a and 8b of the Court of Claims Act *[Ch.37, Sec. 439.8a and b, Ill.Rev.Stat., 1971]*

This case is one of first impression in Illinois. Hence we have deliberated cautiously and at length on the question of

the jurisdiction of this court over the subject matter of this claim. At our request, both parties have favored us with exhaustive briefs on the question of jurisdiction. Oral argument was heard by the court en banc on March 2, 1973, primarily on the question of jurisdiction, a question on which we now express our comments and conclusion.

The legislature created this court and granted it exclusive jurisdiction to hear and determine all claims against the State of Illinois. As set forth in §8 of the Court of Claims Act, the court's exclusive jurisdiction includes:

(a) All claims against the State founded upon any *law* of the State of Illinois . . . and

(b) All claims against the State founded upon any *contruct* entered into with the State of Illinois.

Since this case is founded upon both (a) a law of this State and (b) an alleged contract with this State, the Court of Claims has exclusive jurisdiction if the case is, in fact, "a ***claim*** against the State, cognizable by the court" as contemplated by the following §23 of the Court of Claims Act

"It is the policy of the General Assembly to make no appropriation to pay any *claim against the State, cognizable* by *the court*, unless an award therefor has been made by the court." [Ch. 37 "Courts", Sec. 439.23, Ill. Rev. Stat., 1971 (Emphasis added.)

Is this a ***claim*** against the State within the meaning of the above §23? If so, it differs from all other causes of action under our jurisdiction. In all other claims that have come before us, a claimant seeking a money judgment must prove actual damages measurable in financial loss.

For example, a claimant may be awarded damages for personal injuries caused by the State's negligence in maintaining a stop sign at a highway intersection. However, a citizen who merely sees the potential danger in a downed stop sign does not have a "claim" against the State unless he suffers some actual damage caused by that situation and

proves that the State's negligence was the proximate cause of his financial loss.

In the case before us, the complaint does not charge that any teacher or member has ever suffered any financial damage or failed to receive full pension benefits as provided by law.

We first viewed the situation as being somewhat analogous to the federal Social Security System. Last year Congress abandoned all pretense of an "actuarially sound" trust fund for Social Security and provided that benefits would be financed by each year's social security tax from wage earners. Yet, as stated in a recent article by E. L. Dale, Jr., "No one's benefits—present or future—are in jeopardy. Social Security payments will stop only on the day that the U.S. government stops paying its bills.""

The court felt that the same conclusion would apply to any pension or retirement system created by the State of Illinois so far as the payment of all benefits is concerned. However, the power of the Congress to change the social security law is apparently without any such constitutional limitation as now seems to be imposed on the Illinois Legislature by our 1970 Constitution in Article XIII, *$5:*

"PENSION AND RETIREMENT RIGHTS

"Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

The above section was adopted by the ***Sixth Illinois Constitutional Convention*** on July 21, 1970. After reading the verbatim transcript of that Convention's debate on the

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""Congress Gets a Grip on Social Security" by Edwin L. Dale, Jr., member of the New York Times Washington Bureau, Chicago Tribune, January 21, 1973. Sec. 2, page 1.

adoption of this section, we must conclude that this constitional mandate was intended to establish the enforceability of the contractual rights of the claimant in this action. This provision is much more explicit and affirmative than the general language of Art. I, Sec. **16,** which merely forbids any law "impairing the obligation of contracts."

The same Article XIII of the 1970 Constitution which declares the claimant has ***enforceable*** contractual rights, also delegates to the legislature the authority to prescribe the manner and form in which claimant may seek to enforce his rights against the state by a court procedure. Article XIII, Sec. **4** (effective January **1, 1972)** abolished sovereign immunity in this state "except as the General Assembly shall provide by law." The General Assembly responded by enacting **P.A.** 77-1776 (also effective January **1,1972)** which re-enacted the Court of Claims Act ***(Ch.127, Sec. 801, Ill.Rev.Stat., 1972 Supp.):***

"Except as provided in. . .[the Court of Claims Act] . . . the State of Illinois shall not be made a defendant or party in any court."

The legislature has thus declared that the only court room door which is open to any claimant having a cause of action against the State of Illinois is the door of the Court of Claims. This conclusion was firmly supported by a recent decision of the Illinois Appellate Court in ***Chicago Welfare Rights Org.*** vs. ***Weaver, 5 Ill. App. 3d (1972) 655.*** The Supreme Court of Illinois has previously upheld the exclusive jurisdiction of this court in certain causes of action against the State. Its most recent pronouncement is stated in ***Edelen*** vs. ***Hogsett, 44 Ill.2d (1970) 215.***

It seems clear, therefore, that this court's jurisdiction has been properly invoked by the claimant in this case. The Attorney General confirms this in a brief filed on behalf of the respondent.

It seems equally clear that, since no other court, state or federal, has the requisite jurisdiction over this matter, this court must exercise its jurisdiction in this cause. Otherwise the claimant would be deprived of his constitutional rights under Article I, Sec. 12 of our 1970 Constitution which states that "every person ***shall*** find a certain remedy in the laws for all injuries and wrongs . . ." (The 1870 Bill of Rights counterpart merely stated that "every person ought to find a remedy in the law. . . .") (Emphasis added.) We turn then to such remedy as may be available to the claimant in this suit.

There are no significant issues of law or fact which are in dispute in this matter. At the time oral argument was heard by the court on March 2, 1973, the parties filed stipulations as to the State's unfunded statutory obligations **to the Teachers and the Universities Retirement Systems.** Still pending, and apparently unresolved by the parties hereto, is the status of the Chicago Teachers Fund. Accordingly, this opinion is confined to the Downstate and University Teachers Funds.

These obligations, founded upon statute, are clearly set forth in ***Ch. 108½, Ill.Rev.Stat., 1971:***

Section 15-155 provides: ***Employer contributions. The State of Illinois shall make contributions by biennial appropriations*** of the amounts which, together with the other contributions of employers out of trust, federal, and other funds under their control, the contributions of the participating employees, income from investments, and other income of this system, will be necessary to meet the costs of maintaining and administering this System:

(1) the total amount of the employer contribution for any fiscal year shall be the sum of the amounts estimated to be required, on the basis of the actuarial tables adopted by the board and the prescribed rate of interest to meet the disability benefits, additional death benefits, the employers' portion of the cost of all annuities and survivors insurance benefits and expenses of administration expected to be paid during the year and to result in the accumulation of assets at the end of the year equal to the sum of the following:

(a) the liability for all annuities expected to be paid to the then annuitants, and the survivors insurance benefits expected to be paid;

(b) the liability for all accumulated additional, normal, and survivors insurance contributions of the then participants;

(c) the single premium reserve required for the employers' portion of the

cost of all annuities which have then accrued because of previous earnings of the then participants;

(d) additional reserves which may reasonably be required because of variations in mortality, interest, and turnover experience.

In determining the employer contributions, the board shall include the amount which is required to amortize the cost of acquisition of land and the construction of an office building thereon over a period not exceeding 30 years, including interest at the rate of 6% per anum, less the estimated amount of rentals which may be received from the lease of surplus space in the building.

The contributions of employers from State appropriations for any fiscal year shall not be less than an amount which is required to fund fully the current service costs in accordance with actuarial reserve requirements as prescribed in paragraph (1) of this Section, plus interest at the prescribed rate on the unfunded accrued liabilities.

If an employee is paid from trust or federal funds, the employer shall pay to the board contributions from these funds which are required to fund fully the current service costs in accordance with the actuarial reserve requirements as prescribed in paragraph (1) of this Section. Funds of the alumni associations, foundations, and athletic associations which are affiliated with the universities included as employers under this Article and other employers which do not receive State appropriations are considered as trust funds for the purpose of this Article.

(2) the total employer contribution shall be apportioned among the various funds of the State and other employers, whether trust, federal, or other funds, in accordance with actuarial procedures approved by the board.

The contributions of the State of Illinois for employers which receive appropriations from the State for personal services shall be payable from appropriations made to the employers. The contributions for Class I junior colleges shall be payable solely from appropriations to the Illinois Junior College Board for employer contributions. Class I junior colleges making employer contributions prior to the effective date of this amendatory Act of 1967 shall be reimbursed by the Illinois Junior College Board upon the filing of a claim for reimbursement in the manner prescribed by the Board. The Auditor of Public Accounts shall draw warrants payable to the treasurer of the system upon proper certification by the system, by the Illinois Junior College Board or by the employer in accordance with the laws making such appropriation.

Section 15-156 provides: ***Obligations of state. The payment of (a) the required State contributions,*** (b) all benefits granted under this system, and (c) all expenses in connection with the administration and operation thereof ***are obligations of the State of Zllinois*** to the extent specified in this Article.

Section 16-158 provides: ***Contributions by state and other employing units. The State shall make contributions*** from the common school fund and other state funds to this system of the ***amounts required to meet the obligations of the State*** for the next fiscal year as provided in Sections 16-159 and 16-160. Such amounts shall be no less than 1.2 multiplied by members' contributions and be certified by the board to the Superintendent of Public Instruction and Auditor of Public Accounts.

If employees are paid from special trust or federal funds which are administered by the employing unit, whether school district or other unit, the

employing unit shall pay to the retirement system from such funds the full accruing retirement costs based upon such service as determined by the Board of Trustees of the Teachers' Retirement System.

Section 16-162 provides: *Obligations of State. Payment of the required State contributions* and of all pensions, annuities, retirement allowances, death benefits, refunds and other benefits granted under or assumed by this retirement system, and all expenses in connection with the administration and operation thereof, *are obligations of the State.* [Emphasis supplied]

The meaning and intent of the above statute seems clear and unequivocal. The legislature has created a ***de facto*** contract between the State and the members of the pension funds, an "enforceable contractual relationship" according to Article XIII §5 of the Illinois Constitution. The teachers, on their part, have performed their obligations thereunder to make contributions to the system from their salaries in specified amounts as required by §16-152 and §15-157 of the Acts. These contributions are automatically deducted from teachers salaries and are a condition of employment. The said contract remains executory on the part of the State.

Both parties to this action, in their briefs and oral arguments, agreed that this court cannot compel the legislature to make any appropriations. ***Fergus*** vs. ***Russell, 277 Ill. 20 (1917).*** Nor, according to the briefs filed by the parties in this cause, could any other court force such action on the legislature by decision, injunction or mandamus. To do so, they have suggested, would be violative of the doctrine of the separation of powers. We are reminded of a historic decision of the U.S. Supreme Court in **1832** which enraged President Andrew Jackson, ***Worchester*** vs. ***Georgia, 6 Peters 561-63.*** The President is reported to have said, "John Marshall has made his decision; ***—now let him enforce it!"***

As we have said, this case is one of first impression in Illinois. In the states of Washington, California, Arizona and Pennsylvania, we find cases similar to the matter before us in which the courts have ruled that public pension rights are

contractually enforceable against municipalities. ***Bakenhus*** vs. ***Seattle,*** **48** Wn. 2d **695, 296** 2d **536 (1956);** ***State ex rel. Weaver*** vs. ***Evans,*** Supreme Court Cause No. **41851 (1972);** ***Allen*** vs. ***Long Beach,*** **45** Cal. (2d) **128** (1955); ***Lyon*** vs. *Flournoy*, **76** Cal. Rep. **869 (1969);** *Yeazell* vs. *Copins*, **89** Ariz. **109 (1965);** ***Hickey*** vs. ***Pittsburgh Pension Board,*** **378** Pa. **300, 106** A. 2d **233, 52** ALR 2d **430 (1950).**

Perhaps the leading case from other jurisdictions, and the only case we have noticed in which a writ of mandamus issued against a legislative body, was ***Dombrowski*** vs. ***City of Philadelphia,*** **431** Pa. **199, 245 A.** 2d **238 (1968).**

In ***Dornbrowski*** the Supreme Court of Pennsylvania affirmed the issuance of a writ of mandamus (under a liberal Mandamus Act" and where no Court of Claims existed) compelling the city to make appropriations to its retirement system assuring the actuarial soundness required by its Home Rule Charter. Citing a long line of Pennsylvania authority, the court noted that the entire theory of vested rights in public retirement benefits is a direct outgrowth of the contractual concept of pensions. The court went on to find that the relators' contractual relationship with the city stemmed from a duty imposed by law, being the creation and administration of a retirement system, and that as a party to the contract he had standing to seek the writ **(245 A.** 2d **238,245).** That the failure of the city to provide contributions adequate to keep the retirement fund on an actuarially sound basis resulted in impairment of a contract obligation was clear:

"In essence, then, Dombrowski was attempting to assure himself and all other members of **the Philadelphia municipal retirement system that sufficient funds would be present to meet his and others' retirement payments. Part** of **his**

"The Pennsylvania Mandamus Act provided (Section 3, 12 P.S. $1914): The writ of mandamus may issue upon the application of any person beneficially interested."

contract with the city was a promise made by the city, in its Home Rule Charter, that the retirement system would be actuarially sound. The court below found, a finding not here disputed, that the city had not kept its promise. ***Dombrowski is thus suffering a present impairment*** of ***his contractual rights and thus an immediate injury."*** Id., 246-47 (emphasis supplied)

The court was not impressed with the suggestion that if in due course the relator did not receive his retirement benefits he would sue the city for breach of contract, enter judgment and execute upon city property, the duty to pay the pension being an obligation of the municipality. Nor was his injury by virtue of the failure to provide reserve funding deemed less immediate because there was a prospective future cause of action for breach. Concluding that the suit was properly brought in the individual capacity of the relator as a not yet retired member of the retirement system, the court held:

"It is Dombrowski's contractual relationship with the city that is impaired by the city's failure to comply with its own Home Rule Charter and this immediate impairment supports his standings; that appellee might be able through judgment and execution to obtain the funds due him in 1972 does not prevent him from asserting in 1968 a present impairment of contractual rights." Id., 248.

This Pennsylvania case of ***Dombrowski*** could not be followed in Illinois for several obvious reasons. There is no procedure for mandamus against the state legislature, and certainly not in this court which has exclusive jurisdiction over the subject matter of this claim. Although, as suggested in ***Dombrowski,*** there is a present impairment of claimant's contractual rights, claimant has shown no actual damages, measurable in dollars, which could be a reasonable basis for an award by this court. We recognize, of course, the desirability of full funding, accruing interest to accumulated reserves, and the avoidance of crushing future unfunded liabilities.

As previously stated, claimant's suit seeks an award by this court pursuant to §23 of the Court of Claims Act. In so doing, he is employing and exhausting his statutory

remedies, and fortifying his argument on the constitutional issues. Claimant may be mindful of the following statement by the Supreme Court in ***Edelen*** vs. ***Hogsett, 44*** Ill.2d 215 (1969) at page 219:

"Were it not for the existence of the Court of Claims Act, appellant's argument might be of some substance, but the existence of that legislation, modifying the State's immunity from suit, and the failure of the appellant to seek remedy thereunder, in our judgment renders his constitutional argument inappropriate and not cognizable by this court in the posture in which it is here presented."

We are impressed with the diligence of counsel for both sides in their efforts to work out a practical solution to this difficult problem, and exhibiting, as they have, a sympathetic understanding of the impact of a payment for the full amount of the state's liability to the respective funds. As of this date the full amount apparently would be in excess of ***two billion six hundred million dollars.*** The parties have proposed to amortize said liability over a 50 year period. While the said proposal has been approved as actuarially sound, we cannot enter an award based thereon. We feel that the finding of this court must be in the nature of a declaratory judgment, pursuant to § 57.1 of the Civil Practice Act, a declaration of claimant's rights as we see them, and leaving the amount of any consequential relief to the discretion of the legislature.

It is the opinion of this court that the members, annuitants, and beneficiaries of the Teachers Retirement System of the State of Illinois, and of the State Universities Retirement System are parties to a constitutional and statutory contract with the State of Illinois; that the 1970 Constitution describes their rights thereunder as enforceable, and that the State of Illinois has failed to meet its statutory obligations regarding its indebtedness to these two funds as follows:

Teachers Retirement System of the State of Illinois

1. Due as of June 30, 1971:	**$1,748,375,624.00**
2. Due as of June 30, 1972	**88,179,200.00**

3. Due as of June 30, 1973:	105,820,000.00
4. Due for Fiscal Year 1974:	205,600,000.00
	$2,147,974,824.00

State Universities Retirement System

1. Due as of August 31, 1971:	$ 311,336,000.00
2. Due as of August 31, 1972:	90,085,722.00
3. Due as of August 31, 1973:	53,065,507.00
4. Due for Fiscal Year 1974:	55,882,691.00
	$ 510,369,920.00

Finally, we take judicial notice of the fact that there are now bills pending in the General Assembly which appropriate monies to the Teachers Retirement System as suggested in the stipulation filed herein on March 2, 1973. We also take notice of published reports to the effect that the Governor has now proposed a full scale examination of all public pension programs with a view toward eventually working out an equitable approach.

(No. 73-CC-113—Claimant awarded $800.00.)

FAIRGROUNDS MANOR INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 28, 1973.

FAIRGROUNDS MANOR INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-180—Claimant awarded $27.36.)

AMERICAN PETROLEUM INSTITUTE, Claimant, *vs.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed June 28, 1973.

AMERICAN PETROLEUM INSTITUTE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G.

OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-189—Claimant awarded $968.00.)

SEARS, ROEBUCK AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed June 28, **1973.**

SEARS, ROEBUCK AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 73-CC-244—Claimant awarded $4.62.)

PHILLIPS PETROLEUM COMPANY, Claimant, *vs.* STATE OF ILLJNOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed June 28, **1973.**

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6934—Claimant awarded $1,600.00.)

COUCH & HEYLE, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 28, **1973**

HEYL, ROYSTER, VOELKER & ALLEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 6964—Claimant awarded $426.60.)

ROSECRANCE HOMES FOR CHILDREN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 28, **1973.**

ROSECRANCE HOMES FOR CHILDREN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 7110—Claimants awarded $538.44.)

HUGH L. HIGGINS and WILEY G. YOKLEY, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 28, **1973.**

HUGH L. HIGGINS and WILEY G. YOKLEY, Claimants, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

APPROPRIATION—return of *fugitives.* Claimants would recover for cost of return of fugitives from justice, where State was unable to anticipate the amount necessary to appropriate for this expense.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto and the Court being fully advised in the premises;

THIS COURT FINDS that this expenditure was for the return, by the County of Macon, of fugitives from justice. The counties are required to travel to other jurisdictions for the return of fugitives when the fugitives have been located and apprehended in various jurisdictions throughout the country. The expenses herein reflect the expenses incurred by the County of Macon in sending their sheriffs and deputies to return apprehended fugitives. The investigation and reports from the Department of Law Enforcement indicate that the appropriations for this purpose were expended and a deficiency appropriation of $20,000.00 was requested. However, even before the $20,000.00 was received for reimbursing the various counties for these expenses, it became apparent that even this $20,000.00 deficiency appropriation was going to be inadequate. The original appropriation was expended and the $20,000.00 was used up also, leaving some of these expenses unpaid. Under the rules set forth in ***Fergus*** vs. *Brady*, 277 Ill. 272, this Court finds that inasmuch as the State was unable to anticipate the amount necessary to appropriate for this expense and that since this expenditure was one required of the State by statute, this Court awards claimants as follows:

Hugh L. Higgins..	**$289.22**
Wiley G. Yokley	**269.22**
Total	**$538.44**

(No. 7112—Claimants awarded $508.38.)

JOHN P. WRIGLEY AND SAM S. BAUM, Claimants, *vs.* STATE OF ILLINOIS, Respondent

Opinion filed ***June 28, 1973.***

JOHN P. WRIGLEY AND ***SAM*** S. BAUM, Claimants, pro se.

WILLIAM J. **SCOTT,** Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

APPROPRIATIONS—*return of fugitives*. Claimants would recover for cost of return of fugitives from justice when State was unable to anticipate the amount necessary to appropriation for this expense.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto and the Court being fully advised in the premises;

THIS COURT FINDS that this expenditure was for the return, by the County of Macon, of fugitives from justice. The counties are required to travel to other jurisdictions for the return of fugitives when the fugitives have been located and apprehended in various jurisdictions throughout the country. The expenses herein reflect the expenses incurred by the County of Macon in sending their sheriffs and deputies to return apprehended fugitives. The investigation and reports from the Department of Law Enforcement indicate that the appropriations for this purpose were expended and a deficiency appropriation of $20,000.00 was requested, However, even before the $20,000.00 was received for reimbursing the various counties for these expenses, it became apparent that even this $20,000.00 deficiency appropriation was going to be inadequate. The original appropriation was expended and the $20,000.00 was used up also, leaving some of these expenses unpaid. Under the rules set forth in ***Fergus*** vs. ***Brady,*** 277 Ill. 272, this Court finds that inasmuch as the State was unable to anticipate the amount necessary to appropriate for this expense and that since this expenditure was one required of the State by statute, this Court awards claimants as follows:

John P. Wrigley	$254.19
Sam S. Baum	254.19
Total	$508.38

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT

(No. 00012—Claimant awarded $10,000.00.)

VIRGINIA POLIMENI, as wife of JOHN POLIMENI, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June *13,* **1972.**

VIRGINIA POLIMENI, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Am—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PERLIN, C.J.

This claim was filed pursuant to Ch. ***48,*** *Sec.* ***281 et*** *seq., Ill.Rev.Stat.,* 1971, "Law Enforcement Officers and Firemen Compensation Act." The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, VIRGINIA POLIMENI, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, JOHN POLIMENI, was a volunteer fireman for the Vernon Fire

Protection District, engaged in the scope of duty on June 21, 1971, within the meaning of Section 282 of the aforecited act. On said date he suffered extreme traumatic injuries resulting in his death when the fire department pumper truck he was driving failed to complete a s-shaped curve, overturned and went into a ditch. The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause. . . ."

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be, and the same hereby is, granted to VIRGINIA POLIMENI, as wife and next of kin of the decedent, JOHN POLIMENI.

(No. 00013—Claimant awarded $10,000.00.)

MARTHA ZEHR, as wife of HARRY ZEHR, deceased, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed June 13, 1972.

MARTHA ZEHR, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Act—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PERLIN, C.J.

This claim was filed pursuant to Ch. 48, *Sec.* 281 *et seq.*, *Ill.Rev.Stat.*, 1971, "Law Enforcement Officers and Firemen Compensation Act." The Court is in receipt of the Application for Benefits and Statement of Supervising

Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, MARTHA ZEHR, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, HARRY ZEHR, was a policeman with the City of Fairbury, engaged in the scope of duty on October 11, 1971, within the meaning of Section 282 of the aforecited act. On said date he was injured when the police car he was driving was struck by a semi-trailer. Officer Zehr underwent brain surgery and died on February 19, 1972 as a result of cranio-cerebral injuries. The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause. . . ."

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be, and the same hereby is granted to MARTHA ZEHR, as wife and next of kin of the decedent, HARRY ZEHR.

(No. 00021—Claimant awarded $10,000.00.)

CHARLES W. WILLIAMS, as father of CHARLES J. WILLIAMS, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1972.

CHARLES W. WILLIAMS, Claimant, pro se.

WILLIAM J. Scorr, Attorney General; SAUL R. WEXLER, Assistant Attorney General and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Act—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PERLIN, C.J.

This claim was filed pursuant to Ch. *48, Sec. 281 et seq., Ill.Rev.Stat., 1971,* "Law Enforcement Officers and Firemen Compensation Act." The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the Claimant, CHARLES W. WILLIAMS, is the father of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, CHARLES J. WILLIAMS, was a patrolman for the Rockford Police Department, engaged in the scope of duty on May **31,1972,** within the meaning of Section **282** of the aforecited act. On said date he was shot while questioning a suspect in a previously reported armed robbery. The bullet entered the skull through the right occipital bone with lacerating traumatic injury to both right cerebellar hemisphere and left cerebral hemisphere, resulting in his death on June **1, 1972.** The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause : . . ."

IT IS HEREBY ORDERED that the sum of **$10,000.00** (TEN THOUSAND DOLLARS) be, and the same hereby is granted to **CHARLES** W. WILLIAMS, as father and next of kin of the decedent, CHARLES J. WILLIAMS.

(No. **00008—Claim denied.)**

PATRICIA R. DEAL, as wife **of DONALD DEAL,** deceased, Claimant, **us. STATE** OF **ILLINOIS,** Respondent.

Opinion filed September 25, 1972.

PATRICIA R. DEAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT J. BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Am—Where evidence fails to show that decedent's death occurred during the active performance of duties as a fireman claim will be denied.

BURKS, J.

This claim, arising out of the death of a volunteer fireman, DONALD DEAL, of the Hoffman Estates Fire Protection District, was filed pursuant to provisions of the "Law Enforcement Officer and Firemen Compensation Act," Ch. *48, Sec. 281 et seq., Ill.Rev. Stat., 1971.* Claimant, PATRICIA R. DEAL, is the surviving spouse of the decedent and is the lawful claimant under Section 283(a) of the Act.

A hearing in this matter was held by the Court on August 3, 1972. The facts, which are not in dispute, are as follows: DONALD DEAL was a volunteer fireman for the Hoffman Estates Fire Protection District at the time of his death. On August 6, 1970, he reported for a scheduled fire department drill at approximately 9:30 a.m. Prior to the start of the drill, the decedent complained of a nauseous feeling and stated that his arms felt numb. He was instructed to sit down until he felt better. While he was resting, another fireman checked him and found that his condition had not improved. At 9:53 a.m. he was discovered in an unconscious condition and first aid measures were started. He was taken by ambulance to a hospital where he was pronounced dead on arrival. The death certificate recites that the immediate cause of death was "acute myocardial infarction" with the interval between onset and death "minutes".

Mrs. Deal testified that her husband had returned home on the morning of the incident at approximately 2:30 a.m.

complaining of pains in his chest and arms. Upon arising that morning he was still complaining of the same condition. There is no evidence to show that the decedent's death occurred during the active performance of duties as a fireman, pursuant to Section 282(e) of the Act. In fact, the Application for Benefits filed herein as well as the Attorney General's investigative report and the testimony elicited before this Court all indicated that the decedent had never embarked upon the performance of his duties on the date of his death.

There being no evidence to support a finding that DONALD DEAL was "killed in the line of duty" as defined in the Act, this claim must be denied. It is so ordered and this claim is denied.

(No. **00014—Claim denied.)**

BETTIE A. WILKES and SYBIL M. WILKES as designated beneficiaries of GEORGE A. WILKES, deceased, **Claimants, *vs.*** STATE OF ILLINOIS, Respondent.

Opinion *filed September* 27, 1972.

JOHN ANDRINGA, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT J. BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Am—Where evidence fails to show that decedent's death occurred during the active performance of duties as a fireman claim will be denied.

BURKS, J.

This claim, arising out of the death of Lt. GEORGE A. WILKES of the Chicago Fire Department, was filed pursuant to the provision of the "Law Enforcement Officer and Firemen Compensation Act." ***Ch. 48, Sec. 281 et seq., Ill.Rev. Stat., 1971.***

The claimants, BETTIE A. **WILKES** and SYBIL M. WILKES, are named beneficiaries under the Application for Benefits which was duly filed. The case was heard by the Court on August **3, 1972,** and the following facts were elicited:

Lt. **GEORGE** A. WILKES was a fireman employed by the Chicago Fire Department assigned to firehouse **101** in the City of Chicago at the time of his death on April 12, **1970.** The claimants contend that the decedent accidentally struck his leg on a step while descending the firehouse stairs on March 18, **1970,** and that this incident was the cause of his death almost one month later. Respondent denied that any such incident took place and further contended that there was no causal connection between the alleged incident and the death of Lt. Wilkes.

Testimony showed that Lt. Wilkes was the officer in charge of firehouse **101** on the date of the alleged incident, March **18, 1970,** and that one of his duties was to maintain the log kept at the firehouse. Lt. Wilkes had long experience in maintaining the log records and knew that it must contain a report of all accidents. There is no notation of an accident occurring to Lt. Wilkes on the day in question. His wife, one of the claimants herein, delivered a report to Lt. Wilkes' immediate superior on March 20, **1970,** which indicated that the decedent would be unable to return to work for a period of one week. March 20th was to be the next assignment day for Lt. Wilkes since it was the policy of the Chicago Fire Department that all men would work 24 hours on and **48** hours off.

Submitted in evidence was a report from Dr. Herold Thatcher indicating that Wilkes had been seen by him on March **19, 1970,** and that a diagnosis of "thrombophlebitis" was made. The date of the report was May **14, 1970,** over one month after the date of death of the decedent. The

report also noted that as of the 19th of March, **1970,** the decedent's complaint had been of two days duration and also noted that Mr. Wilkes was last seen on March **31,1970,** at which time his condition had improved.

The coroner's certificate of death, introduced into evidence, described the cause of death as a "stroke, cerebral hemorrhage."

The respondent offered the testimony of two witnesses, former Division Marshal Robert Fairbanks and Captain Thomas Murphy. Former Division Marshal Fairbanks testified that he had a conversation with the decedent on March **18, 1970,** at which time he noticed that the decedent was limping and inquired as to the cause. The decedent told him that several years ago he had suffered frostbite and periodically he suffered severe pain in the lower calf area of the right leg.

Lt. Wilkes did not file an accident report of his alleged accidental injury as required by departmental rules. The Court does not hold that such a violation of the employer's rules would, per se, foreclose claimants' rights under the LEOFC Act. This Court has followed the rule expressed in numerous Workmen's Compensation cases holding that an employee's violation of the employer's rules indicates that he is "only guilty of negligence which will not preclude an award of compensation." ***Z.L.P. Workmen's Compensation Section 158; Hertel*** vs. ***State, 1939, 11 Ill. Ct. Cl. 86.*** However, the absence of any report of the alleged accidental injury in the records of the Chicago Fire Department does increase claimants' burden of proving that decedent was in fact injured; that he was "injured in the active performance of his duties as a fireman"; and that his death resulted from that injury. ***Ch. 48, Sec. 282(e), Ill.-Rev.Stat., 1971.***

Gould's Medical Dictionary defines thrombophlebitis

as "inflammation of a vein associated with thrombosis". There is no indication in the doctor's statement that this was caused by an accidental injury and we find no basis for holding that this may be reasonably inferred. In fact, the manifest weight of the evidence is to the contrary.

No objection was raised to the testimony of Marshal Fairbanks on the grounds that it might be hearsay. Nevertheless, the Court weighed the admissibility of this testimony since it was obviously against claimants' interest. The LEOFC Act does not change the rules of evidence, and the admissibility of evidence in claim proceedings is covered by rules of the Civil Practice Act and the rules of the Supreme Court as stated in Rule 2 of this Court. In the applicable rules, we hold that Marshal Fairbanks' testimony was admissible as being a part of the res gestae and as an admission. ***I.L.P. Workmen's Compensation $342.***

Finally, the death certificate states that the cause of death was a "stroke, cerebral hemorrhage." Claimants contend that Dr. Glass, the physician signing the death certificate, "did not perform a diagnosis" of the alleged previous accident and did not have sufficient information on which to base a valid conclusion. Nevertheless, the death certificate must be considered by the Court for such probative value as it may have in the light of claimants' objection, and in the absence of any significant evidence to contradict it.

The Court is bound by the language of the statute which is a special act for the payment of compensation only in cases in which an officer is "killed in the line of duty." To qualify under this Act, claimants must prove by a preponderance of the evidence that the deceased officer lost his life **"as** a result of injury received in the active performance of his duties" and that "the injury arose from violence or other accidental cause." The evidence

submitted in this case totally fails to establish the essential facts that are required to justify a finding that the officer was killed in the line of duty as required by the Act. The Court finds that Lt. Wilkes was not killed in the line of duty as defined in the Law Enforcement Officers and Firemen Compensation Act.

IT IS HEREBY ORDERED, therefore, that this claim must be, and the same hereby is, denied.

(No. 00020—Claimant awarded $10,000.00.)

ESTHER E. MCBURNEY, as wife of LOUIS O. MCBURNEY, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December *18, 1972.*

ESTHER E. MCBURNEY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Am—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PERLIN, C.J.

This claim was filed pursuant to *Ch. 48, Sec. 281 et seq., Ill.Rev.Stat., 1971,* "Law Enforcement Officers and Firemen Compensation Act." The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, ESTHER E. MCBURNEY, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, LOUIS O. MCBURNEY, was a fireman with the Bloomington Township Fire Department engaged in the scope of his duties on July 1, 1971,

within the meaning of Section 282 of the aforecited act. On said date he suffered a heart attack while attempting to extinguish a fire at Lot 83, Alexander Road, Bloomington, Illinois. Fireman McBurney died minutes later of acute heart failure due to or as a consequence of "Severe calcarious, healed, endocarditis of mitral valve with insufficiency" of "years". The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause . . . ."

IT IS HEREBY ORDERED that the sum of $10,000 (TEN THOUSAND DOLLARS) be, and the same hereby is, granted to ESTHER E. MCBURNEY, as wife and next of kin of the decedent, LOUIS O. MCBURNEY.

(No. 00023—Claimant awarded $10,000.00)

JOAN GALLOWITCH, as wife of ROBERT L. GALLOWITCH, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 27, 1972.

JOAN GALLOWITCH, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Am—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PER CURIAM.

This claim was filed pursuant to Ch. *48, Sec. 281 et seq., Ill.Rev.Stat.,* 1971, "Law Enforcement Officers and Firemen Compensation Act." The Court is in receipt of the

Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, JOAN GALLOWITCH, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, ROBERT L. GALLOWITCH, was a policeman with the City of Chicago Police Department, engaged in the scope of duty on May 24,1972, within the meaning of Section 282 of the aforecited act. On said date he suffered a gunshot wound in the left side of his chest while attempting to apprehend a burglar in the process of holding up an Illinois Bell Telephone truck in an alley at 8649 S. Cottage. Officer Gallowitch died of his wounds at 2:40 p.m. on May 24, 1972. The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause . . ."

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be, and the same hereby is, granted to JOAN GALLOWITCH, as wife and next of kin of the decedent, ROBERT L. GALLOWITCH.

(No. **00002—Claimant awarded $10,000.00.**)

MILDRED N. BURGHOLZER, as wife of WILLIAM A. BURGHOLZER, JR., deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 9, 1973.

MILDRED N. BURGHOLZER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,

Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIRMEN COMPENSATION Am—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PERLIN, C.J.

This claim was filed pursuant to Ch. 48, *Sec.* ***281 et*** *seq., Ill.Rev.Stat.,* 1971, "Law Enforcement Officers and Firemen Compensation Act." The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, MILDRED N. BURGHOLZER, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, WILLIAM A. BURGHOLZER, JR., was a patrolman with the Oswego Police Department, engaged in activities within the scope of duty on January 18, 1972, within the meaning of Section 282 of the aforecited act. On said date he suffered a fatal acute coronary occlusion while participating in the trailing of suspects involved in a grocery-liquor store robbery. At approximately 10:30 p.m. on the night in question, Officer Burgholzer and his partner, Sgt. Ronald Reuter, received a request from the Sheriff of Kendall County advising them tat a Trailways bus had come through the search area and it was feared that the suspects could have boarded the bus. The officers were instructed to stop the bus and make a thorough search. When the bus approached the intersection of Routes 34 and 31, the officers pulled their vehicle into the roadway blocking the bus, jumped out of their vehicle with weapons drawn. As Officer Burgholzer approached the rear of the bus he collapsed and fell to the road surface. Sgt. Ronald Reuter, who was the decedent's partner at the time

in question, gave a written statement to the Attorney General as follows:

"We were informed that weapons were used by the robbers, that they were armed and dangerous."

Upon stopping the bus, Reuter stated:

"We both jumped out of our patrol car; I had a shotgun and Officer Burgholzer had a service revolver drawn. This was an extremely tense situation in view of our concern for the safety of the bus passengers and ourselves in the event the armed suspects were aboard."

The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause . . ."

IT IS HEREBY ORDERED that the sum of $10,000 (TEN THOUSAND DOLLARS), be, and the same hereby is, granted to MILDRED N. BURGHOLZER, as wife and next of kin of the decedent, WILLIAM A. BURGHOLZER, JR.

(No. 00005—Claim denied.)

DOLORES GEORGEAN, as widow and beneficiary of NICK GEORGEAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed April 11,* 1973.**

DOLORES GEORGEAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **VINCENT BISKUPIC,** Special Assistant Attorney General and **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where decedent was not charged with "the enforcement of the law and protection of the public interest at the risk of his life", decedent was not a law enforcement officer within the meaning of the statute.

SAME—*legislative intent.* Considering the general purpose of the Act, the

legislature did 'not intend to compensate the survivors of those officers and firemen whose deaths were not attributable to the risks inherent in their profession.

PER CURIAM.

This action is brought by DOLORES GEORGEAN, as widow and designated beneficiary of NICK GEORGEAN, deceased, pursuant to the "Law Enforcement Officers and Firemen Compensation Act," ***Ch.*** 48, ***Sec. 281 et seq., Ill.Rev.Stat., 1971.***

Claimant filed an application for benefits, a statement of the decedent's supervising officer, designation of beneficiary, and coroner's certificate **of** death. The Attorney General's office investigated the claim, pursuant to Section **4** of the Act, and recommended that the case be set for hearing. The court, sitting ***en banc,*** heard the case on August **4, 1972.**

The relevant facts, briefly, are as follows: the decedent, Nick Georgean, was an employee of the Office of the Secretary of State. He was hired on January **24, 1971,** and served as an assistant supply officer from February **1,1971,** until the date of his death, July **23, 1971.** His duties were clerical in nature, consisting of making entries in a large log book of all traffic citations and convictions. He was also responsible for preparing various reports, notifying investigators of court dates, and occasionally accompanying investigators to court. It appeared that the decedent also assisted in the requisition and distribution of equipment, uniforms, guns, and official documents. On July **23, 1971,** the decedent reported for work at approximately 8:30 a.m. During the course of the day he distributed booklets and other reference material in the supply room. He also had occasion, at least six times that day, to make entries in the log book, which weighed approximately 33 pounds. The book was an exhibit at the hearing. At approximately 2:50 p.m. Mr. Georgean collapsed. Emergency first aid was administered, and an ambulance

called. Mr. Georgean was pronounced dead on arrival at Loretto Hospital at approximately 3:40 p.m.

The cause of death, according to the Coroner's Certificate of Death, was myocardial infarction. No medical evidence was introduced at the hearing. Testifying at the hearing on behalf of claimant were the claimant herself, Robert D. Kutz, an assistant superintendent in the Secretary of State's office, and Lieutenant Wilbur Coffey of the Secretary of State's office.

There are two issues before this court: 1) was the decedent a "law enforcement officer" as defined in Section 281 of the Act; and 2) was the decedent "killed in the line of duty" within the meaning of the Act.

The testimony elicited before the court was to the effect that the decedent was an investigator in the Office of the Secretary of State; he wore a uniform and carried a gun. His actual title was "Assistant Supply Officer." While there was testimony as to some of the hazards encountered by investigators for the Secretary, it seems clear that these were not the type that the decedent faced. Except for certain infrequent occasions, the decedent's duties were purely clerical; these were the duties he was performing on the date of his death.

There were several obvious contradictions in the testimony of claimant's witnesses. However, considering all the facts presented to the court, it is our opinion that the decedent was not a "law enforcement officer" within the meaning of the statute as we interpret it.

We are bound by the following statutory definition stated in the Act:

"Section 281(a) 'law enforcement officer' or 'officer' means any person employed by the State or a local governmental entity as a policeman, peace officer or in some like position involving the enforcement of the law and protection of the public interest *at the risk of that* person's *life.*" (emphasis added.)

The test is whether the "officer" is charged with "the enforcement of the law and protection of the public interest ***at the risk of his life.''***

The decedent here, while undoubtedly performing a valuable service to the community, did not face the perils of a police officer as contemplated by the statute. We must view this Act to be limited by the words emphasized in the above definition.

The apparent intent of the legislature, when it enacted this law, was to compensate beneficiaries of firemen and law enforcement officers who had ***risked their lives*** in the public interest. At the time the legislation was passed, the media was full of incidents of snipings and violent deaths of policemen and firemen. The words of limitation in the Act clearly indicate that the legislature did not intend to compensate any person in uniform for a death unrelated to the risks inherent in and peculiar to the professions of firefighting and law enforcement. Such a construction might have even made the Act unconstitutional as "Special legislation" referred to in the ***1970 Zllinois Constitution, Article ZV, $13.*** We are confident that this was not the legislature's intent. It is our obligation, as it is of all courts of record, to presume that the legislation is valid and constitutional where it can be ***so*** construed. ***11 Z.L.P. Constitutional Law $67.***

Mr. Kutz and Lieutenant Coffey testified as to the general nature of duties for investigators of the Secretary of State's office. This testimony was impeached, however, by the admission into evidence of Attorney General's Exhibit **1)** affidavit executed by Coffey, which reflected that, with the exception of the first week of his employment, the decedent's duties had no bearing on any law enforcement obligation. Accordingly, while some Secretary of State's "investigators," assigned to hazardous duties, might be

eligible "officers" under this Act, the decedent in this case was not.

Having found that the decedent did not come within the statutory definition of a "law enforcement officer", it is not necessary for the court to consider the second issue presented. However, some ambiguity in the statute, as well as the recurring question in other cases, necessitates some general guidelines and principles regarding heart-attack cases.

In determining when an officer's death from a heart attack may be compensable under the Act, we must carefully consider the definition of the term "killed in the line of duty" given to us in Section 281(e) of the Act which reads as follows:

"Section 281(e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause . . ."

Except for the words "or other accidental cause", the meaning of the above section is perfectly clear. However, the ambiguous words must be considered in the light of the following rule stated in ***I.L.P. Statute $123:***

"In construing a statute to ascertain the intention of the intention of the General Assembly, the statute should be construed as a whole or in its entirety, and the legislative intent gathered from the entire statute rather than from any one part thereof.

"All parts, provision, or sections of a statute must be read, considered, or construed together, in the light of the general purpose and object of the statute, so as to make it harmonious and consistent in all its parts and to give effect, if possible, to all such parts."

Therefore, Section 282(e) must be construed ***in pari materia*** with ***$5*** which notes that compensation under this Act is in addition to, and not exclusive of, any pension rights, death benefits or other compensation otherwise payable by law. In short, this Act creates a special statutory remedy in addition to any other remedy, either statutory or common-law, which the decedent's heirs might have.

Hence we believe that, considering the general purpose of the special Act, the legislature did not intend to compensate the survivors of those officers and firemen whose deaths were not directly attributable to the risks inherent to their profession. It can be said, therefore, that where the heart-attack is the result of such a peril inherent to, and as the result of stress arising from the acts of law enforcement or firefighting, then the claim is compensable. If the heart-attack results from non-firefighting or non-law enforcement duties, or even from such duties which do not require some special stress or strain on the heart, then the officer was not "killed in the line of duty" within the meaning of the Act.

In summary, it is our opinion that the legislature intended to compensate the survivors of law enforcement officers and firemen who were exposed to risks greater than those to which the public is exposed. There is no rationale for compensating survivors of policemen or firemen who died as the result of mundane activities which did not involve special resk to their decedents' persons.

This court finds that the decedent, NICK GEORGEAN, was not a "law enforcement officer" within the meaning of this Act and therefore denies the claim presented herein.

(No. **00032—Claimant awarded** $10,000.00.)

JUDY LACKEY, as wife of PETER E. LACKEY, Deceased, Claimant, *us.* STATE OF ILLINOIS, Respondent.

***Opinion filed April 26,* 1973.**

JUDY LACKEY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where **Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.**

PER CURIAM.

This claim was filed pursuant to ***Ch. 48, Sec. 281 et seq., Ill.Rev.Stat., 1971,*** "Law Enforcement Officers and Firemen Compensation Act". The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, JUDY LACKEY, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, PETER E. LACKEY, was a special agent investigator employed by the State of Illinois Bureau of Investigation engaged in the scope of duty on November 27, 1972, within the meaning of Section 282 of the aforecited act. On said date he suffered several stab wounds in his body and a slashing of his throat by a sharp instrument while enroute from his home to the Springfield office of the IBI, where he was to meet a fellow officer upon assignment to Quincy, Illinois. Agent Lackey died at approximately 7:30 a.m. on November 27, 1972, as a result of "Exsanguinating hemorrhage due to or as a consequence of severance of both superficial jugular veins, both common carotid arteries, left int. jugular due or as a consequence of slashing of throat by sharp instrument". The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section **282** (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause . . ."

A subsequent investigation by police led to the arrest of one Barron Dean Fonner who had been previously arrested by the decedent for narcotic violations. Fonner is presently incarcerated in the Sangamon County Jail awaiting trial.

IT IS HEREBY ORDERED that the sum of **$10,000** (TEN THOUSAND DOLLARS) be, and the same hereby is; granted to JUDY LACKEY, as wife and next of kin of the decedent, PETER E. LACKEY.

(No. 00033—Claimant awarded $10,000.00.)

ROSE F. WENZEL, as wife of ROBERT F. WENZEL, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed April 26,* 1973.**

ROSE F. WENZEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PER CURIAM.

This claim was filed pursuant to Ch. 48, *Sec. 281 et seq., Ill.Rev.Stat.*, 1971, "Law Enforcement Officers and Firemen Compensation Act". The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, ROSE F. WENZEL, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, ROBERT F. WENZEL, was a patrolman for the traffic division—Area No. 6, by the City of Chicago Police Department engaged in the scope of his duties on January **19, 1973,** within the meaning of Section 282 of the aforecited act. On said date he was fatally shot three times after stopping a vehicle with two occupants, apparently for a traffic violation. Officer Wenzel's death was clearly as a result of bullet wounds to the back,

neck, and head. The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282(e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause. . . ."

IT IS HEREBY ORDERED that the sum of $10,000 (TEN THOUSAND DOLLARS) be, and the same here is, granted to ROSE F. WENZEL, as wife and next of kin of the decedent, ROBERT F. WENZEL.

(No. 00034—Claimant awarded $10,000.00.)

LUCILLE FRANCIS ZEIGER, as **wife** of **JAMES PATRICK ZEIGER, de**ceased, Claimant, ***vs.*** STATE OF **ILLINOIS,** Respondent.

Opinion filed April 26, 1973.

LUCILLE FRANCIS ZEIGER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Am—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PER CURIAM.

This claim was filed pursuant to Ch. ***48,*** *Sec* ***281 et seq.,*** *Ill.Rev.Stat.,* 1971, "Law Enforcement Officers and Firemen Compensation Act". The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, LUCILLE FRANCIS ZEIGER, is the wife of the decedent and is the named beneficiary under the Ap-

plication for Benefits. That the decedent, JAMES PATRICK ZEIGER, was a prison guard for the Department of Corrections, Illinois State Penitentiary, engaged in the scope of his duties on January **11, 1973,** within the meaning of Section 282 of the aforesaid act. On said date he suffered stab wounds while allowing inmates "out on #8 gallery for reassignment." His death was a result of seven stab wounds inflicted by the direct willful act of an inmate. After the stabbing, the inmate rolled or kicked the decedent causing his fall 35 to **40** feet from a tier, to the concrete floor. The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause . . ."

IT IS HEREBY ORDERED that the sum of **$10,000** (TEN THOUSAND DOLLARS) be, and the same hereby is, granted to LUCILLE FRANCIS ZEIGER, as wife and next of kin of the decedent, JAMES PATRICK ZEIGER.

(No. 00009—Claimant awarded $10,000.00)

LOIS MAE BERKSHIRE, as wife of LARRY BERKSHIRE, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed *May 8,* **1973.**

LOIS MAE BERKSHIRE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

PER CURIAM.

This claim was filed pursuant to *Ch.* **48,** *Sec.* **281** *et seq., Ill.Rev.Stat.,* **1971,** "Law Enforcement Officers and Firemen Compensation Act". The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, LOIS MAE BERKSHIRE, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, LARRY BERKSHIRE, was a patrolman with the City of Litchfield Police Department, engaged in the scope of his duty on September **19, 1971,** within the meaning of Section **282** of the aforecited act. On said date Patrolman Berkshire answered a call regarding a loose horse on N. Douglas Street. Berkshire mounted the horse to ride it to a ball field and fell off the horse hitting his head on the pavement. Berkshire died three days later, the death certificate reciting that the immediate cause of death was cerebral edema due to or as a consequence of cerebral contusion posterior, and contre coup lacerations of the brain anteriorly due to or as a consequence of a fall from a horse. The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282 (e) 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause . . . ."

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be, and the same hereby is, granted to LOIS MAE BERKSHIRE, as wife and next of kin of the decedent, LARRY BERKSHIRE.

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINIONS

52 Stephan L. Roth, M.D., Ltd.

95 SCOA Industries, Inc.

112 Vincent Mola and Frank Recchia

165 Richard H. Hoppe

183 Chicago Tribune Company

190 Kenneth Knox

277 The Devereux Foundation

301 James C. McElya

4680 Phyllis Marquardt, Admr., Et Al.

4700 Patrick J. Heron

4742 Verna M. Kane

4749 Chicago and North Western Railway Company, A Corporation

4830 Evelyn Hummons, Et Al.

4831 Iva M. Dunlap

4919 Leroy J. High

4949 Providence N. Domico

4978 William Shramek

4991 Phil-Maid, Inc., A Delaware Corp.

5007 Fayette V. Gilbert, Admr., Etc.

5008 The Almore Dye House, Inc., An Illinois Corporation

5016 Rayford Thomas and Resolute Insurance Company

5023 Boden Products, Inc.

5028 Peoria Terminal Company

5040 Ants Lepik, Et Al.

5051 Cavalier Insurance Corp., Et Al.

5059 Victoria Gordon

5070 John Gorman and Dorothy Gorman

5083 Annie L. Andrews and Otis Harris

5099 Edward Kortum and Eleanor Kortum

5106 Charles Lane

5159 Emil C. MacDonald and Harold J. Grebasch

5183 Levi Little, Individually, and for the use of Employers Mutual Liability Insurance Company of Wisconsin

5231 Donna Rubino

5249 Jack L. Munch

5250 Jack L. Munch

5253 Harris Trust and Savings Bank, Exec., Et Al.

5326 Donald F. Marchbanks

5361 Robert Callaghan

5363 Alverai A. Pena, Individually, Etc.

5365 Rita Bauer, A Minor, Etc.

5397 Viola Bovenschulte, Executrix, Etc.

5401 Daniel Bythewood

5420 Irving C. Richman

5475 Abraham Mazurski and Olga Mazurski

5499 Robert McCreary

5509 Peter J. Collins, Admr., Etc.

5522 Howard S. Chapman

5534 Keith Tattersall and Eleanor Tattersall

5535 Moses Talbert Stevens, A Minor, Etc.

5552 Frances M. Beaton

5557 Donald M. Cadotte, A Minor, Etc.

5591 Leo Vitale

5594 Mary Grace Wirtz, Et Al.

5613 Joseph Gutgesell and Christine Gutgesell

5618 Lola Holloway, Conservator, Etc.

5677 Enid D. Frandzel, As Surviving Spouse of Jordan R. Frandzel, Deceased, Etc.

5681 Janet E. McNeil, A Minor, Etc.

5683 Charles Sunkel

5693 Clifton Mayhugh and Mary Mayhugh

5702 John Edmonds

5710 Roger M. VanWeelden

5794 Raymond A. Sullivan, Sr., Individually, Etc.

5819 Franklin H. Brown

5820 Isabelle Brown

5852 Hen-Chie Chen, Et Al.

5853 Fay Levenson

5860 Garfield Park Moving and Storage Company

5863 Licata Moving and Storage Company

5864 Licata Moving and Storage Company

5868 Licata Moving and Storage Company

5878 Lyle E. Myher

5927 Sandra L. Guthrie

5940 Northeast Community Hospital

5947 Tricka K. McGaughey, Et Al.

5950 Emily Blonda

6033 Betty Bartlett, Admr., Etc.

6083 Samuel Zimmerman

6093 Mid-America Ambulance and Oxygen Service, Inc., An Illinois Corp., Et Al.

6094 Avalon Petroleum Company and Home Insurance Company

6129 C. J. Wacker, M.D.

6158 Francis Zimmerman and Eleanor Zimmerman, His Wife

6166 Ron Urban

6181 Charles W. Richardson and United States of America

6184 Frank Evans

6186 DeKalb Public Hospital

6269 Licata Moving and Storage Company

6275 Licata Moving and Storage Company

6280 Nancy Napoleon

6310 Naomi Patinkin

6311 Wallace White

6351 Javan Alexander, Et Al.

6382 William Ellis and Allstate Insurance Company

6383 Frank M. Ventura and Allstate Insurance Company

6452 City Savings Association

6464 Xerox Corporation

6467 Bobby Bryant and Constance Bryant

6469 Max Shaps

6483 Mollie Ramstrom

6523 A-1 Ambulance Service, Inc.

6527 Rodney Jarvis, Individually, Et Al.

6562 Florencio Gomez

6587 St. Mary Hospital

6621 Jules Ritholz, Et Al.

6629 A-1 Ambulance Service, Inc.

6641 Catholic Charities of Decatur

6645 Betty Jane Sikorski

6649 Beth Barshinger for the DeKalb Public Hospital

6670 Donna D. Lacine, By Henry A. Lacine, Her Father and Next Friend

6677 A-1 Ambulance Service, Inc.

6678 A-1 Ambulance Service, Inc.

6680 A-1 Ambulance Service, Inc.

6682 A-1 Ambulance Service, Inc.

6687 Licata Moving and Storage Company

6688 Licata Moving and Storage Company

6695 Scott, Foremans and Company

6726 St. Bernard Hospital

6731 Alco Universal Incorporated, A Michigan Corporation

6733 Hoekstra Overall Laundry and Supply Company

6746 Rockford Memorial Hospital

6747 Gordon W. Hall, M.D.

6754 Nolia Brown

6780 Lucile Harsch

6804 Diana Lunsford, Individually, Etc.

6815 Nancy J. Hale, Widow, Etc.

6821 Standard Oil Division of American Oil Company

6822 Standard Oil Division of American Oil Company

6827 James Eickmeyer

6828 Matthews Book Company

6868 Atlantic Richfield Company

6886 DeKalb Public Hospital

6914 Pearl Pokora

6925 Gregory Panko

6927 Wilbum Parris

6929 Menard County Health Department

6967 Favor Ruhl Company/Michael's

6973 Illinois State Penitentiary—Stateville Branch

7016 David B. Citron

7022 Chase Drug Store

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7075 Mark Lawyer

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